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California Legislature

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CHAPTER 948

An act to add Chapter 4.5 (commencing with Section 18800) to Part 11 of, and to repeal Chapter 4 (commencing with Section 18700) of Part 11 of, the Education Code, relating to libraries, and making an appropriation therefor.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Chapter 4.5 (commencing with Section 18800) is added to Part 11 of the Education Code, to read:

CHAPTER 4.5. LIBRARY OF CALIFORNIA ACT

Article 1. General Provisions

18800. This chapter shall be known as the Library of California Act.

18801. (a) The Legislature finds all of the following:

(1) Our economy is information based. Because libraries are information providers, they have a primary responsibility for the collection, organization, and dissemination of information supporting the economic development of California.

(2) Resource sharing, cooperation, and collaboration among all California libraries of all types creates a whole that is greater than the sum of its parts. Each library can serve as a gateway to the resources and services of every other California library.

(3) The state's economic and democratic vitality depends upon the education of all Californians and their equitable access to information in an effective, timely fashion. Public and private partnerships enhance information access and delivery.

(4) Access to information is increasingly technology based. Technology is vital to the libraries serving Californians. The sharing of resources and services among libraries is most cost-effective when appropriate technology is utilized effectively.

(5) Our multicultural and complex society creates needs for materials, information, and services that go beyond the ability of any one library or any one type of library to provide.

(6) The academic library is a primary source of curriculum-related educational and research information for higher education.

(7) The public library is a primary source of information, enrichment, and lifelong learning for persons of any age, location, or economic circumstance.

(8) The school library is a primary source of curriculum-related resources and instructional reading materials in elementary and secondary schools.

(9) The special library is a primary source of information and research resources related to its specific mission or the purpose of its parent organization which may be a corporation, hospital, legal organization or other institution.

(10) No single library is able to meet all the diverse needs of all of its primary clientele, including people with disabilities, non-English-speaking and limited-English-speaking persons, those who are confined to home or an institution, those who are geographically isolated, and those who are economically disadvantaged. Highly specialized information needs often surpass the resources of any single library in the state.

(11) The effective sharing of resources and services among the libraries of California requires a structure and an ongoing commitment by the state to compensate libraries for services provided to Californians other than their primary clientele.

(b) The Legislature therefore finds and declares the following:

(1) It is in the interest of the people of the state to ensure that all Californians have free and convenient access to all library resources and services that could provide essential information and enrich their lives.

(2) To respond fully and successfully to these information needs and to the diversity of California's population, libraries of all types and in all parts of the state must be enabled to interact, cooperate, and share resources.

(c) (1) It is the intent of the Legislature to provide all Californians with the opportunity to obtain from a local library all their needed materials and informational services by facilitating, and supporting through that library, access to the resources of all libraries in the state.

(2) It is the intent of the Legislature to accomplish this goal by enabling libraries of all types and in all parts of the state to provide their users with the services and resources of all libraries in this state, and by assisting libraries to provide and improve service to the underserved.

18802. In adopting this chapter, the Legislature declares that its policy is as follows:

(a) To reaffirm the principle of local control of the government or administration, or both, of libraries and to affirm that the provisions of this chapter apply only to libraries authorized by their jurisdictions or institutions to apply to participate in the programs authorized by this chapter.

(b) To enable the users of all libraries, regardless of the library type, size, or geographic location, to benefit from some or all of the services authorized by this chapter.

(c) To require that no library, as a condition for receiving funds or services under this chapter, acquire, provide access to, or exclude any specific book, periodical, film, recording, data base, picture, or other material or medium, or acquire, provide access to, or exclude any classification of books or other material by author, subject matter, or type.

(d) To encourage adequate funding of libraries from local or other sources, with state aid under this program to be furnished as a supplement to, rather than a replacement for, other funds.

(e) To ensure that the necessary technological infrastructure is provided.

(f) To ensure library service to the underserved of all ages.

(g) To encourage and enable the sharing of resources among libraries of all types.

(h) To reimburse equitably any participating library for services it provides to Californians other than its primary clientele.

(i) To assure that no existing library service programs, funded at the local or state level, are diminished as a result of the resource sharing authorized by this chapter.

Article 2. Definitions

18810. As used in this chapter, unless the context otherwise indicates or unless specific exception is made, the following definitions apply:

(a) "Academic library" means a library established and maintained by a college or university or other postsecondary institution to meet the educational needs of its students, faculty, staff, and others by agreement.

(b) "Act" means the Library of California Act.

(c) "Direct loan" means the lending of a book or other item, or furnishing a copy directly to a borrower, in person or through electronic means.

(d) "Document delivery" means the transmission, in response to a request, of information from one library to another, in either a physical or digital format.

(e) "Electronic direct access" means the provision of electronic borrowing, or electronic document delivery services directly to library users, or both.

(f) "Information agencies" means institutions that provide or preserve, or both, information resources, such as archives, historical societies, libraries, and museums.

(g) "Institution" means a business or corporation, college, correctional facility, education agency, governmental agency, hospital, not-for-profit organization, professional association, school district, or other organized group that is authorized by law and that operates one or more libraries. These libraries would be academic, school, or special libraries located in California. For the purposes of

this act, if an institution is a member of a regional library network and a library of that institution decides to participate in a regional library network and meets the eligibility standards, but is located within the geographic boundaries of a network that is different from the network within which the institution is located, that library shall be a participating library in the regional network within which it is located.

(h) "Interlibrary loan" means the lending or providing of a book or other item, or furnishing a copy, from one library to another library that is under a different jurisdictional or institutional administration as the result of a request for the item from its primary clientele.

(i) "Interlibrary reference" means the providing of information by one library or reference center to another library or reference center that is under a different jurisdictional or institutional administration as the result of a request from its primary clientele for information that is beyond that library's mission and resources.

(j) "Library user" means a Californian who is part of the primary clientele of a library but does not work for that library.

(k) "Network region" means a geographic subdivision of California within which libraries organize as a regional library network under this act for the purpose of resource sharing and mutual cooperation. Boundaries of network regions are determined on the basis of the following criteria: public library jurisdictional boundaries; commonality with boundaries of educational institutions; recognition of current transportation, marketing, and communication patterns; location of and access to library resources; adequacy of resources for resource sharing purposes; and population.

(*l*) "Participating library" means the libraries of a public library jurisdiction that is a member of a regional library network or a library of an institution that is a member of a regional library network if that library decides to participate in a regional library network and meets the eligibility standards set forth in Section 18830.

(m) "Patron referral" means the accepted procedure among libraries by which onsite services are made available in an appropriate format to people who would otherwise not be able to utilize them.

(n) "Preservation" means the prevention or delay of deterioration of, and damage to, archival and library materials through the appropriate environmental controls or treatment, or both. For the purposes of this chapter, preservation encompasses conservation, digitization, and duplication of endangered materials in a different format.

(o) "Primary clientele" means the people for whom the library has been established to provide services. It includes people served by different outlets of its jurisdiction or institution. A person may be a member of the primary clientele of more than one type of library.

(p) "Public library" means a library, or two or more libraries, operated by a single public jurisdiction to meet the needs of its primary clientele and others by agreement.

(q) "Public library jurisdiction" means a county, city and county, city or any district that is authorized by law to provide public library services and that operates a public library.

(r) "Regional library council" means the administrative body over each regional library network, on which all members are represented.

(s) "Regional library network" means a not-for-profit, cooperative organization established by the Library of California Board composed of libraries within the public library jurisdictions or institutions that choose to become members and agree to share resources and services with, or to provide resources and services to, or both, other members of the regional library network.

(t) "Resources" are library materials that include, but are not limited to, print, nonprint materials and microformats; network resources such as software, hardware, and equipment; electronic and magnetic records; data bases; communication technology; facilities; and human expertise.

(u) "School library" means a library that is established to support the curriculum-related research and instructional reading needs of pupils and teachers and provides the collections, related equipment, and instructional services of a staff for an elementary or secondary school.

(v) "Special library" means a library that is maintained by a parent organization to serve a specialized clientele; or an independent library that may provide specialized materials or services, or both, in a specific subject to the public, a segment of the public, or other libraries. It is maintained by an association, business or corporation, government agency, research institution, learned society, not-for-profit organization, professional association, museum, industrial enterprise, chamber of commerce, or other organized group and is characterized by its depth of subject coverage.

(w) "Statewide resource library group" means those libraries in California that have the most comprehensive or specialized resources, or both, in topics needed by people statewide or regionally and that agree to provide access to their resources to all members of all regional library networks.

(x) "State board" means the Library of California Board.

(y) "Type of library" means academic, public, school, or special library.

(z) "Underserved" means any population segment with service needs not adequately met by traditional library service patterns; including, but not limited to: children, disabled, economically displaced, ethnic and culturally diverse populations, geographically

isolated, illiterate, institutionalized, non-English speaking, and young adults.

Article 3. Administration

18820. (a) There is hereby established in the state government the Library of California Board. The state board shall consist of 13 members.

(b) It is the intent of the Legislature that members of the state board be broadly representative of the people served by libraries statewide and that members reflect the cultural traditions of California's people and the diverse geographic areas of the state.

(c) The Governor shall appoint nine members to the state board. The Governor shall appoint two members to represent academic libraries, two members to represent public libraries, two members to represent school libraries, and two members to represent special libraries. At the time of their appointment and throughout their tenure, these eight members must work for, or be part of, or be associated with, the governance structure of the type of library they represent, and that library must be a member of a regional library network. The Governor shall also appoint one member representing the general public.

(d) The Senate Rules Committee shall appoint two members representing the general public. The Speaker of the Assembly shall also appoint two members representing the general public.

(e) The initial members of the state board shall be those persons serving on the California Library Services Board at the time of the enactment of this chapter. As new members are appointed, the composition of the board shall reflect the provisions of this section. The terms of office of members of the state board is four years or the remainder of the term for a position filled after a vacancy. No individual shall serve for more than two consecutive four-year terms.

(f) The concurrence of seven members of the state board is necessary for the validity of any of its acts.

(g) Members of the state board shall serve without pay. They shall receive their actual and necessary traveling expenses while conducting official business.

18821. The state board shall adopt rules, regulations, and general policies for the implementation of this chapter and, consistent with this chapter, shall have the following powers and duties:

(a) To direct the State Librarian in the administration of this chapter.

(b) To review for its approval all proposals submitted under this chapter.

(c) To submit budget proposals as part of the annual budget of the State Library.

(d) To expend the funds appropriated for the purpose of implementing this chapter.

(e) To establish regional library networks.

(f) To require participating libraries, member institutions, public library jurisdictions, and regional library networks to prepare and submit any reports and information necessary to carry out the provisions of this chapter, and to prescribe the form and manner for providing the reports and information.

(g) To develop formulas for the equitable allocation of reimbursements.

(h) To administer an appeals process for membership eligibility in a regional library network.

(i) To work with and support the work of the regional library networks and the statewide resource libraries group.

(j) To administer the California Library Services Act, California Literacy Campaign, and Families for Literacy program.

(k) To serve as the State Advisory Council on Libraries on matters related to the federal Library Services and Technology Act.

18822. The State Librarian is the chief executive officer of the state board for the purposes of this chapter and shall do all of the following:

(a) Make reports and recommendations that may be required by the state board.

(b) Administer and monitor the provisions of this chapter.

(c) Review all claims to ensure the programmatic and technical compliance with the provisions of this chapter.

Article 4. Eligible Libraries

18830. (a) Libraries in public library jurisdictions that are members of a regional library network and libraries in institutions that are members of a regional library network are eligible to receive services under this chapter and to become participating libraries. The board of governance or the appropriate administrative authority for each academic library, public library, school library, and special library that decides to join a regional library network shall take official action to approve network membership. That local governing agency or appropriate administrative authority shall agree not to reduce funding for library services as a result of network participation. Each public library jurisdiction, school district, university or college, and institution or corporation, or agency or branch thereof, may become a member of a regional library network. A public library jurisdiction not a member of the California Library Service Act public library system on the effective date of this section, and an institution, shall have at least one library that agrees to be a participating library and meets the following eligibility standards:

(1) A written explicit mission statement and service objectives.

(2) A fixed location in California.

(3) Established hours of service.

(4) An organized collection of information and materials accessible for use by its primary clientele.

(5) Designated, onsite, paid staff for library services. At least one staff person shall have a master's degree in library or information science or a California library media teacher credential issued by the Commission on Teacher Credentialing, but equivalent graduate education or demonstrated professional experience may be substituted for this requirement. The eligibility determination will be made by the regional library network.

(6) An established funding base.

(b) Participating libraries must agree to all of the following:

(1) To share resources and services with other members of the regional library network.

(2) To provide resources and services for other members of the regional library network.

(3) To meet the minimum resource-sharing performance standards of the regional library network.

(c) Participating libraries may not obtain services provided under this act on behalf of nonparticipating libraries. No membership fees or service fees may be assessed for access to services delivered by state funds under this chapter. Regional library networks may provide their members with increased or enhanced services for a fee, at the option of each member.

(d) Library jurisdictions that are members of the California Library Services Act public library systems on the effective date of this section are deemed to meet the eligibility standards in subdivision (a), and shall not be required to certify that they meet these eligibility standards.

18831. (a) Each participating library shall receive state-supported services from a single regional library network. Geographical boundaries determine which regional library network a public library jurisdiction or institution, and its participating libraries, may join; exceptions may be made by the state board. Realignment of membership from one regional library network to another is permissible. A public library jurisdiction or an institution that is a member of a regional library network may also subscribe to services offered by other regional library networks.

(b) Eligible libraries may receive state funds for services delivered under this chapter.

Article 5. Regional Library Network Services

18840. To be eligible for funds under this article, a regional library network shall submit a plan to the state board for its approval. The plan shall include all of the following:

(a) An organizational structure.

(b) Bylaws.

(c) Membership policies, assuring that all eligible libraries in eligible public library jurisdictions and in eligible institutions in the geographic region will be enabled to participate.

(d) A long-range plan, including the transition of services from the California Library Services Act to the Library of California Act, the criteria and functions for regional resource libraries, and the linkages with information agencies in the region.

(e) The endorsement of the charter members. The charter members shall include more than one type of library.

(f) Geographical contiguity.

18841. (a) Each regional library network shall establish a regional library council. Every eligible public library jurisdiction is designated as a member of the regional library network and its library director or designee is its representative on the regional network council. Every eligible institution of which one or more libraries is a participating library, as described in Section 18830, is designated as a member of the regional library network and shall designate its representative on the regional network council from among the directors of those participating libraries and its chief library coordinator. In addition, the regional library council shall include one library user from each type of member library. There shall be one vote per person on the regional network council. Duties of the regional network council include overall administrative responsibility for the network, adopting an annual plan of service, assuring the appropriate expenditure of funds, and submitting annual budget proposals to the state board for implementation of the provisions of this article.

(b) Each regional network council shall elect from its membership a representative board to carry out its policies. The board shall include at least one representative from each type of library elected by representatives of that type of library and at least one library user. There shall be one vote per person on the representative board.

(c) Administration and management of the regional library network shall provide the vision and leadership necessary to perform the functions and deliver the services in a timely and satisfactory manner.

18842. Each regional library network shall do all of the following:

(a) Make available a telecommunications system for the transfer of information and communications among its members.

(b) Provide regional communications based upon the most effective methods of exchanging information among its members.

(c) Provide intraregional delivery service based upon the most cost-effective methods for moving materials among its members.

(d) Provide online access to the information files, resources, and bibliographic records of its members which may be accessed regionally and statewide.

18843. Any eligible library or combination of eligible libraries may receive funds from a regional library network for the provision of public access to the range of library resources and services available statewide through electronic online resources.

18844. Each eligible library may participate in one or more of the access services components through its regional library network and be reimbursed fully for its service to Californians who do not constitute its primary clientele. Reimbursement rates shall be equitable. The state board shall develop the reimbursement rate formulas. All of the following are access services components:

(a) Interlibrary loan. Each eligible library shall be reimbursed fully to cover the handling costs of each interlibrary loan among members of the regional library networks. Participants shall provide, as well as utilize, interlibrary loan services and may not charge handling fees to other members.

(b) Patron referral and onsite services. Each eligible library shall be reimbursed fully for services and resources that are provided to Californians who would otherwise be ineligible for services from that public library jurisdiction or that institution. These persons must be referred by another member of a regional library network. Information agencies that are not libraries may also participate in this component and be reimbursed if they are the only source for the information.

(c) Direct loan. Each eligible library may provide access to Californians by providing direct borrowing privileges to the primary clientele of other libraries. They shall be reimbursed fully for the handling costs of all loans according to an allocation formula. Each public library jurisdiction that is a member of a regional library network shall provide direct borrowing privileges to all residents of the area served by the regional library network.

(d) Electronic direct access. Each eligible library may provide access to Californians by providing electronic borrowing privileges or electronic document delivery privileges, or both, to the primary clientele of other participating libraries. They shall be reimbursed fully for the handling costs of each transaction. Members participating in the electronic direct access component shall provide and utilize electronic direct access services and may not charge handling fees for this service to other members participating in this program or to their primary clientele.

(e) Document delivery. Each eligible library shall be reimbursed fully to cover the costs of document delivery resulting from an interlibrary loan transaction and electronic loan transaction as defined in this section.

18845. Each regional library network shall provide opportunities for training and continuing education activities that encourage the most effective use of the resources and services authorized under this chapter, and that respond to the needs of its members in the effective delivery of services.

18846. (a) Each regional library network shall provide information and referrals to answer requests that are beyond the capacity or capability of its members by accessing the resources and expertise of other libraries, improving general reference service in participating libraries, and improving reference service to respond to the needs of the underserved populations in the region.

(b) Any eligible library or combination of eligible libraries or regional library network may receive funds from the state board for information service enhancement within the service area.

18847. Each regional library network shall augment the public awareness programs of its members by providing public relations packages to them for customization and dissemination.

18848. Any combination of eligible libraries may receive funds from the regional library network for cooperative, coordinated resource development programs of benefit to the local service area and to the region as a whole. Each library participating in this program shall already be capable of meeting the basic, recurring needs of its primary clientele through its locally supported collection. Library resources purchased, in whole or in part, under this program shall be widely accessible to Californians for the useful life of those resources.

18849. Any regional library network may apply to the state board for funds for services to the underserved programs on a region-wide basis. Regional library networks may also apply for funds for other region-wide programs, but these programs shall include a component for serving the underserved on a region-wide basis.

Article 6. Statewide Services

18850. The state board shall make available all of the following:

(a) A telecommunications infrastructure to ensure that all participating libraries have equitable access to the resources and services of all other California libraries.

(b) A statewide communications system between and among regional library networks, statewide resource libraries, information agencies, and all other organizations or institutions participating in the programs authorized by this chapter.

(c) A statewide delivery system between and among regional library networks, statewide resource libraries, information agencies, and all other organizations or institutions participating in the programs authorized by this chapter.

18851. (a) The state board shall promote and support standard bibliographic records and communication protocols in participating libraries to ensure statewide access to their resources.

(b) The state board shall make available online access to bibliographic records and locations of serial publications held by participating libraries and statewide online access to library

information files, resources, and bibliographic records statewide, as facilitated by the regional library networks.

18852. (a) The state board shall make available a continuing education clearinghouse related to library services and encourage the coordination of activities among the continuing education providers statewide.

(b) The state board shall provide for training and continuing education opportunities that encourage the most effective use of the resources and services authorized under this chapter.

18853. (a) The state board shall facilitate and support access to specialized information expertise and resources statewide to answer information requests generated by its primary clientele that are beyond the capacity or capability of a member institution or public library jurisdiction and its regional library network. The information may be provided by libraries, information agencies, and other regional library networks; and it shall be provided through electronic or physical means. Provision shall be made for information formats specially relevant to culturally diverse populations and persons with disabilities.

(b) Any eligible library or combination of libraries or regional library networks may receive funds from the state board for information service enhancement within the service area.

18854. The state board shall expand public awareness of the value, services, and resources of the participating library of whatever type, emphasizing its ability to serve as a gateway to all other California libraries.

18855. (a) The state board shall encourage, promote and support cooperative, coordinated resource development among member institutions and member public library jurisdictions.

(b) The state board shall make available a clearinghouse to facilitate the voluntary transfer of a participating library's resources to another participating library in response to changes in that library's mission or location.

(c) Any combination of eligible libraries may receive funds from the state board for cooperative, coordinated resource development programs of benefit to people in their local area and in the state as a whole. Each library participating in this program shall already be capable of meeting the basic, recurring needs of its primary clientele through its locally supported collection. Library resources purchased, in whole or in part, under this program shall be widely accessible to Californians for the useful life of those resources.

18856. (a) The state board shall make available a preservation information center to provide preservation information, coordinate preservation activities, and conduct preservation training for participating libraries and information agencies statewide.

(b) Any eligible library or combination of eligible libraries may receive funds from the state board for the preservation of, and widespread access to, materials that document California's heritage,

enhance its educational opportunities and economic future, and portray its cultural diversity. Materials in all formats may be preserved.

18857. Any eligible library or combination of eligible libraries may submit proposals to the state board for services to the underserved programs within the service area. Funds may be expended for the development of collections to meet the needs of the underserved, together with the employment or retraining of staff necessary to promote and utilize the collections effectively, and to provide appropriate services to the underserved.

18858. Administration and management shall provide the vision and leadership necessary to perform the functions and deliver the services in a timely and satisfactory manner. Statewide coordination includes linkages with national and international library networks and participation in initiatives related to library services and development that cross state and national boundaries.

18859. Major resource libraries statewide may participate in these programs through the statewide resource libraries group, developing protocols whereby their resources may be accessed appropriately by people throughout California. Each library must be a member or a participating library in a regional library network.

(a) Funds may be allocated to some or all libraries in this group for services delivered and performed under this article.

(b) Collaborative and cooperative projects advancing library services to the people of California may be undertaken and supported by some or all members of this group.

Article 7. State Funding

18860. (a) Planning shall occur at the regional level for the development of library service programs responsive to the needs of people within each network region. Some or all of these service programs may be supported by the state.

(b) It is the intent of the Legislature that the state do all of the following:

(1) Reimburse all participating libraries for services provided to Californians who do not constitute their primary clientele.

(2) Support the necessary infrastructure enabling the interlibrary resource sharing to occur.

(3) Assure equitable access to the rich resources of its many libraries to all Californians.

18861. Funds shall be allocated to member institutions and member public library jurisdictions in accordance with reimbursement formulas adopted by the state board and with criteria adopted by the state board to carry out the provisions of this chapter.

18862. (a) During the first three years of operation, each regional library network shall receive a basic funding allocation for

service delivery as it establishes services and expands its membership.

(b) After its three-year establishment period, each regional library network shall receive an appropriation that contains a base component that is a uniform statewide minimum allocation, a component related to demographic variables including population, geography, population demographics and cost of living, and a component related to the amount of service delivered in the preceding fiscal year.

18863. Funds appropriated for the support of statewide services shall be allocated to those services in accordance with criteria adopted by the state board to carry out the provisions of this chapter.

18864. There shall be a transition period from California Library Services Act services and funding to the Library of California Act services and funding.

18865. Funding provided under this chapter shall support the costs of administering its provisions and delivering its services.

Article 8. Transition

18870. (a) The transition period from the California Library Services Act to the Library of California Act shall begin on the effective date of this chapter.

(b) As new program elements and state funds are phased in to implement this chapter, they will replace and augment the corresponding program elements and funds in the California Library Services Act.

(c) When all program elements of the California Library Services Act have been replaced and augmented under the provisions of this chapter, the California Library Services Act as set forth in Chapter 4 (commencing with Section 18700) is hereby repealed unless a subsequent act of the Legislature continues it in full force and effect. During the transition period this chapter shall control in case of conflicts between this chapter and the California Library Services Act. The state board shall file a written notice with the Secretary of the Senate and the Chief Clerk of the Assembly notifying the Legislature of the fact, and date, of full implementation of this chapter.

SEC. 2. The sum of five million dollars ($5,000,000) is hereby appropriated from the General Fund to the Library of California Board for the purpose of funding the startup phase of the Library of California as set forth in Chapter 4.5 (commencing with Section 18800) of Part 11 of the Education Code for expenditure in the 1998-99 fiscal year to pay the costs of all of the following:

(a) Telecommunications infrastructure to support up to 1,000 libraries, including, but not limited to, the costs of linking systems and installing regional servers.

(b) Statewide information data base licenses.

(c) Reimbursement for interlibrary loans and direct loans pursuant to subdivisions (a) and (c) of Section 18844 of the Education Code.

(d) Regional library network development.

(e) Support for statewide coordination.

CHAPTER 949

An act to amend Section 361.3 of, and to add Sections 324.5 and 361.4 to, the Welfare and Institutions Code, relating to children.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. This act shall be known as the Lance Helms Child Safety Act of 1998.

SEC. 2. Section 324.5 is added to the Welfare and Institutions Code, to read:

324.5. (a) Whenever allegations of physical or sexual abuse of a child come to the attention of a local law enforcement agency or the local child welfare department and the child is taken into protective custody, the local law enforcement agency, or child welfare department may, as soon as practically possible, consult with a medical practitioner, who has specialized training in detecting and treating child abuse injuries and neglect, to determine whether a physical examination of the child is appropriate. If deemed appropriate, the local law enforcement agency, or the child welfare department, shall cause the child to undergo a physical examination performed by a medical practitioner who has specialized training in detecting and treating child abuse injuries and neglect, and, whenever possible, shall ensure that this examination take place within 72 hours of the time the child was taken into protective custody. In the event the allegations are made while the child is in custody, the physical examination shall be performed within 72 hours of the time the allegations were made.

In the case of a petition filed pursuant to Section 319, the department shall provide the results of the physical examination to the court and to any counsel for the minor, and counsel for the parent or guardian of the minor. Failure to obtain this physical examination shall not be grounds to deny a petition under this section.

(b) The local child welfare agency shall, whenever possible, request that additional medical examinations to determine child abuse injuries or neglect, be performed by the same medical practitioner who performed the examinations described in subdivision (a). If it is not possible to obtain additional medical

examinations, the local child welfare agency shall ensure that future medical practitioners to whom the child has been referred for ongoing diagnosis and treatment have specialized training in detecting and treating child abuse injuries and neglect and have access to the child's medical records covering the current and previous incidents of child abuse.

SEC. 3. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of all the following factors:

(1) The best interests of the child, including special physical, psychological, educational, medical, or emotional needs.

(2) The wishes of the parent, the relative, and child, if appropriate.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half-siblings in the same home, if such a placement is found to be in the best interests of each of the children as provided in Section 16002.

(5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect as provided for in Section 361.4.

(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for the child.

(7) The ability of the relative to do the following:

(A) Provide a safe, secure, and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from his or her parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

(G) Facilitate implementation of all elements of the case plan.

(H) Provide legal permanence for the child if reunification fails.

However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative.

(I) Arrange for appropriate and safe child care, as necessary.

(8) The safety of the relative's home. For purposes of this paragraph, the county social worker shall conduct a direct assessment

of the safety of the relative's home. The information obtained as a result of this assessment shall be documented by the county social worker in the child's case record.

In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. The court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child. This inquiry shall not be construed, however, to guarantee that the minor will be placed with any person so identified. The county social worker shall initially contact the relatives given preferential consideration for placement to determine if they desire the child to be placed with them. Those desiring placement shall be assessed according to the factors enumerated in this subdivision. The county social worker shall document these efforts in the social study prepared pursuant to Section 358.1. The court shall authorize the county social worker, while assessing these relatives for the possibility of placement, to disclose to the relative, as appropriate, the fact that the child is in custody, the alleged reasons for the custody, and the projected likely date for the child's return home or placement for adoption or legal guardianship. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is related to the child or the child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great" or "grand" or the spouse of any such person even if the marriage has been terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the minor must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will fulfill the minor's reunification or permanent plan requirements. In addition to the factors described in subdivision (a),

the county social worker shall consider whether the relative has established and maintained a relationship with the minor.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

SEC. 4. Section 361.4 is added to the Welfare and Institutions Code, to read:

361.4. (a) Prior to placing a child in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall visit the home to ascertain the appropriateness of the placement.

(b) Whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the court or county social worker placing the child shall cause a criminal record check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System pursuant to Section 1522.06 of the Health and Safety Code. The criminal record check shall be conducted with regard to all persons over the age of 18 years living in the home, and on any other person over the age of 18 years, other than professionals providing professional services to the child, known to the placing entity who may have significant contact with the child, including any person who has a familial or intimate relationship with any person living in the home. A criminal record check may be conducted pursuant to this section on any person over the age of 14 years living in the home who the county social worker believes may have a criminal record.

(c) Whenever a child may be placed in the home of a relative, or a prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall cause a check of the Child Abuse Index pursuant to subdivision (a) of Section 11170 of the Penal Code to be requested from the Department of Justice. The Child Abuse Index check shall be conducted on all persons over the age of 18 years living in the home.

(d) If either the criminal records check or Child Abuse Index checks conducted pursuant to subdivisions (b) and (c) indicate that the person on whom the check was conducted may have a criminal record or may be a known or suspected child abuser, and the county social worker still intends to place a child in the home of the relative, prospective guardian, or other person who is not a licensed or certified foster parent, the county social worker shall cause a fingerprint clearance check to be conducted through the Department of Justice before placing a child in the home.

(1) If the fingerprint clearance check indicates that the person has no criminal record, the county social worker and court may consider the home of the relative, prospective guardian, or other child who is not a licensed or certified foster parent for placement of a child.

(2) If the fingerprint clearance check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child shall not be placed in the home.

(3) Upon request from a county, the Director of Social Services may waive the application of this section pursuant to standards established in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code. The director shall grant or deny the waiver within 14 days of receipt of the county's request.

(e) Nothing in this section shall preclude a county from conducting a criminal background check using fingerprints that the county is otherwise authorized to conduct.

SEC. 5. The State Department of Social Services shall, with input from county welfare departments, report to the Legislature by January 1, 2002, regarding the number of foster children placed with relatives, the availability of relative placements, and the incidences of crimes perpetrated against foster children who are living in the homes of relatives.

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 950

An act relating to the Chabot Observatory and Science Center, and making an appropriation therefor.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 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 historic Chabot Observatory began as a public observatory in downtown Oakland, serving Oakland citizens and the greater bay area community, and through its programs has welcomed and educated over two million visitors since 1883.

(b) In the early 20th century, the observatory was administered by the Oakland Unified School District which made the facility an integral part of formal science education programs and also made it available for a large public program.

(c) The current Chabot Observatory and Science Center facility, consisting of a 1915-era observatory building, a separate planetarium, and several temporary classrooms and laboratories, severely limits the science center's ability to fulfill the vision for science education due to technological and structural safety issues, including its location directly on an active rift of the Hayward Fault and the interference from surrounding city lights that have encroached in the years since the observatory's construction and affect viewing through its historic 8-inch and 20-inch public telescopes.

(d) In 1989, Oakland's interest in having a regional science center that was responsive to the science education needs of its children and neighboring communities led to the creation of a joint powers agency by the City of Oakland, the Oakland Unified School District, and the East Bay Regional Park District, and these partner agencies have together contributed over $25,600,000 to this project.

(e) The Lewis Center for Educational Research began as a public educational facility under the Apple Valley Unified School District in 1990 and has provided science education programs for over 80,000 students throughout southern California during its eight years of operation. The center is home to a California public school, grades K through 12, operated by the High Desert "Partnership in Academic Excellence" Foundation, Incorporated (the foundation), a nonprofit educational foundation.

(f) Five hundred students attend science, astronomy, and aviation classes at the 11,000 square foot Lewis Center facility. Students can attend ground school and fly the T-40 Jet Flight Simulator provided by the United States Air Force. Students also learn computer skills in the Gateway to Excellence Program sponsored by GTE, and work in the greenhouse or study physics in the laboratory.

(g) In partnership with NASA and the Jet Propulsion Laboratory (JPL) in Pasadena, the Lewis Center operates the DSS 12, a deep space antenna located at the Goldstone Deep Space Tracking Station. This $11,000,000 antenna was converted into a radio telescope for the Goldstone Apple Valley Radio Telescope project (GAVRT). Students from across California and the nation direct this powerful scientific instrument by remote control via telecommunications through "Mission Control" housed at the Lewis Center. Staff from the Lewis Center and JPL train teachers from all areas of the United States to perform scheduled missions with their students, providing interactive opportunities for students from diverse backgrounds and locations to work together via telecommunications to study the wonders of the heavens.

(h) The Lewis Center observatory, with its 14-inch telescope provides optical viewing to support the work of radio astronomers.

The center operates a telescope on Mount Wilson by remote control through the Telescopes in Education Program. The center's growing expertise in remote operations of scientific equipment and status as the worldwide educational site for grades K-12, inclusive, radio astronomy will provide a powerful statewide linkage to the Chabot Observatory and Science Center.

(i) The vision of the new Chabot Observatory and Science Center and the Lewis Center for Educational Research is to create the nation's premier model for teaching science and technologies, where one can imagine, understand, and learn to shape the future through science.

(j) The goals of these two observatories and science centers are as follows:

(1) To present more effective and engaging ways for children and adults to explore science and technology.

(2) To train teachers in science education's best practices and new teaching technologies, and equip them with resources to use these in the classroom.

(3) To inspire students and their families to pursue higher levels of scientific literacy.

(4) To demonstrate the relevance of science and technology in everyday living.

(5) To electronically link these two innovative science centers together, and to link these centers with other similar organizations, via telecommunications and the Internet, to support a dynamic statewide science education platform.

(k) California's youth must be science-literate and comfortable with technology to be competitive job seekers, and it is widely recognized that the quality of science, mathematics, and environmental education needs to be improved in California and nationwide, and that there are endemic cycles of low achievement that persist in many high minority-enrolled public schools, low-income neighborhoods, rural areas, and historically underrepresented groups.

(*l*) These deficiencies are particularly pressing in the diverse San Francisco Bay area and the greater Los Angeles area, where the growth in science and technology-related industries has created an enormous demand for educated, skilled workers.

(m) Many respected researchers have demonstrated the need for a fundamental shift in methods of science teaching to emphasize curriculum that is project-based, anchored in a "real world context," discovery oriented, and interdisciplinary, and the education of teachers must be approached in a different way to reflect new approaches to curriculum, activities, and student needs.

(n) The educational programs of the Chabot Observatory and Science Center and the Lewis Center for Educational Research complement and supplement the school district's efforts to implement a more effective educational model by offering a wide

range of programs and resources that schools and districts cannot provide on their own. These science centers will create effective statewide platforms for testing and evaluating distance learning, performance-based education, collaborative learning, and new experimental methods for education in the 21st century.

(o) The Chabot Observatory and Science Center and the Lewis Center for Educational Research place a major emphasis on engaging populations that are historically not well represented in science and technology education, including women, minorities, and low-income youth.

(p) The Chabot Observatory and Science Center has planned to build a new 77,000 square foot science education center in the Joaquin Miller Park of Oakland, to fulfill these goals and offer new programs for the people of the bay area.

(q) The Chabot Observatory and Science Center has raised over $47,400,000 to build a new science education center, including a $17,500,000 grant from the United States Air Force Office of Scientific Research. In recognition of its national significance, the Chabot Observatory and Science Center has been named a community affiliate of the Smithsonian Institution, one of eight in the country. Moreover, in conjunction with the White House Millennium Celebration Project, the Chabot Observatory and Science Center will link the nation's 30 Challenger Centers as the lead for a national student project on Mars exploration.

(r) The citizens of Oakland in 1996 voted approval for $6,500,000 for this new facility through the general obligation bond act known as Measure I.

(s) The Chabot Observatory and Science Center has raised over $1,500,000 in peer-reviewed scientific grants, $785,000 from private foundations, $800,000 from corporations, and over $1,500,000 from individuals to support planning and design of this new science education center.

(t) This act will provide $5,000,000 in state funds for the Chabot Observatory and Science Center, and will leverage $4,000,000 in new federal grants and an $8,000,000 challenge grant from a private foundation that is contingent on the state's contribution. This funding will enable completion of the observatory's west building, which includes a National Science Foundation-funded solar system dynamics modeling exhibition; a Challenger Center space mission simulator; the Teacher Research and Training Center; the library, computer lab, and media production studio; and the observatory's historic transit telescope. A significant feature of the west building is the Virtual Science Center, which enables classroom teachers throughout the state to call on Chabot's telescopes, laboratories, and media resources for everyday support in their classrooms. In addition, this funding will enable the building of three telescope observatories to house the eight-inch refractor, the 20-inch refractor,

and a 36-inch reflector, the largest telescope open to the public on a regular basis in the United States.

(u) This new facility is scheduled to open in 1999, and will include the magnificent historic Chabot telescopes; a new 36-inch computerized telescope; a state-of-the-art planetarium; interactive science exhibits for children, adults, and families; a Challenger Center space station and mission control simulator; a telescope makers' workshop; a fiber optic-linked multimedia center; a virtual science center for continuous online access and education in homes, communities, libraries, and schools; infrared technology for multilingual programs; and flexible, integrated laboratory spaces for science exploration and education.

(v) The Lewis Center for Educational Research plans to purchase land and build a second facility, the Lewis Center for Earth Science. The location of the new building will take advantage of an environmentally rich portion of the Mojave River that is a destination for numerous migratory birds to provide students with onsite capability to study planet Earth up close. A large portion of the proposed tract of land will provide a preserve for native species in a highly unique biome of southern California.

(w) The new facility will be linked electronically to the Lewis and Chabot observatories to allow students from around the state to work collaboratively studying the environment of our home planet to compare and contrast the differences and similarities of objects within our solar system and those of deep space.

(x) The Lewis Center's current facility has been funded from community and business donations and other partnerships, including an $850,000 grant from the federal Department of Housing and Urban Development and $500,000 contributed from the foundation. In 1998, the Lewis Center received a $1,500,000 special purpose grant from NASA for teacher training, curriculum development, and student programs through GAVRT. The new facility will leverage funding provided by these partnerships.

(y) The new Lewis Center for Earth Science will include a planetarium, theater, classrooms, greenhouse, aviary, outdoor research areas, and remote sensing devices including television cameras to view the nocturnal creatures that inhabit this area. The expansion will enable 3,000 students per month to participate in field trip activities, and classes and will enable thousands more to participate online. A new mobile planetarium, telescope, and computer center will travel from the Lewis Center to schoolsites for a four-day intensive infusion of science and teaching strategies involving teachers, students, and families.

(z) The Chabot Observatory and Science Center and the Lewis Center for Educational Research will become California-based centerpiece institutions for public astronomy and science education in the country, and will contribute toward the improvement of

science education and technological literacy for California students, teachers, and families.

(aa) Seven million dollars ($7,000,000) of support from the state will help make possible the timely completion of the new Chabot Observatory and Science Center by November 1999, and the Lewis Center for Earth Science by March 2000, with all facilities available to the public and all education programs in place to serve the children, teachers, and families of the state.

SEC. 2. (a) A sum not to exceed seven million dollars ($7,000,000) is hereby appropriated from the General Fund to be allocated as follows:

(1) A sum not to exceed five million dollars ($5,000,000) to the Chabot Observatory and Science Center, a joint powers agency created by the City of Oakland, the Oakland Unified School District, and the East Bay Regional Park District, to fund the completion of the new Chabot Observatory and Science Center facility in Oakland and its programs for science education for the people of the state.

(2) A sum not to exceed two million dollars ($2,000,000) to the town of Apple Valley to administer a grant to the nonprofit High Desert "Partnership in Academic Excellence" Foundation, Incorporated to purchase land and build the Lewis Center for Earth Science.

(b) The Legislative Analyst shall review the use of the funds appropriated pursuant to subdivision (a) and shall submit to the Legislature a report on its findings upon the completion of the new Chabot Observatory and Science Center facility and the new Lewis Center for Earth Science.

CHAPTER 951

An act to amend and supplement the Budget Act of 1998 by adding Item 8260-104-0001 to Section 2.00 thereof, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. The Budget Act of 1998 (Chapter 324 of the Statutes of 1998) is hereby amended and supplemented by adding Item 8260-104-0001 to Section 2.00 to read as follows:

8260–104–0001––For Local Assistance, California Arts Council 2,500,000

Provisions:

1. The amount appropriated in this item is for allocation to the Simon Weisenthal Center−Museum of Tolerance. No allocation from this appropriation shall be made until the Simon Weisenthal Center notifies the California Arts Council in writing and warrants that the conditions set forth in Provisions 2, 3, and 4 of this item have been met.
2. This funding shall be used for the acquisition of a facility to conduct the activities of the Simon Weisenthal Center, including those activities funded by the appropriations in Items 8120−012−0268, 8120−101−0268 and 8260−102−0001 of this act.
3. The facility shall be owned and operated by the Simon Weisenthal Center.
4. The Simon Weisenthal Center shall provide a match for the facility acquisition equal to the amount of funds provided from this appropriation.

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

In order to make appropriations that amend and supplement the Budget Act of 1998 effective as soon as possible, it is necessary that this act go into immediate effect.

CHAPTER 952

An act to add Section 68084 to the Education Code, to amend Sections 15325 and 15346.1 of, and to add Section 15346.12 to, the Government Code, and to add and repeal Section 33334.27 of the Health and Safety Code, relating to defense conversion, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 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 Defense Conversion, Reuse, and Retention Omnibus Act.

SEC. 2. Since the first base realignment and closure action by the federal government in 1988, this state has suffered the closure or major realignment of 29 military facilities reflecting a loss of over 500,000 direct and indirect jobs. In addition to the immediate economic effect of closure on a community, complex and burdensome federal and state requirements severely delay timely transfer of the property and its conversion to a viable economic entity. Action is required to directly assist communities in acquiring real property from the federal government. Similar assistance is required to assist affected communities' private sector partners in those cases where a community cannot afford or chooses to not acquire the property directly. In every situation, action is required to assist communities and state agencies in meeting the myriad of regulatory requirements of property disposal in a timely and nonconfrontational manner. Thirty-six military facilities remain open in this state and affirmative action is required to ensure that this state has a strategy to retain and grow these facilities in preparation for an inevitable future round of base realignments and closures. An important and previously undefined state role exists to assist communities in both closure and retention efforts. This act addresses that role and provides a needed state focus for reuse, conversion, and retention efforts in this state.

SEC. 3. Section 68084 is added to the Education Code, to read:

68084. A parent who is a federal civil service employee and his or her natural or adopted dependent children are entitled to resident classification at the California State University, the University of California, or a California community college if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be classified as a resident pursuant to Section 68017, so long as the student continuously attends an institution of public higher education. The Trade and Commerce Agency shall certify qualifying military mission realignment actions under this section and provide this information to the California Community Colleges, the California State University, and the University of California.

SEC. 4. Section 15325 of the Government Code is amended to read:

15325. The work of the agency shall be divided into at least the following:

(a) The Office of Economic Research.
(b) The Office of Local Development.
(c) The Office of Business Development.
(d) The Office of Tourism.
(e) The Office of Small Business.
(f) The Film Office.
(g) The Office of Marketing and Communications.
(h) The Office of Strategic Technology.

(i) The Office of Foreign Investment.

(j) World Trade Commission, including international trade and investment offices, Office of Export Development, and Export Finance Office.

(k) California Field Offices.

(*l*) Office of Trade Policy and Research.

(m) Office of Permit Assistance.

(n) Office of California-Mexico Affairs.

(o) Office of Military Base Retention.

SEC. 5. Section 15346.1 of the Government Code is amended to read:

15346.1. The Legislature declares as follows:

(a) For over half a century, California's industries, universities, businesses, and workers have contributed to our nation's defense, utilizing their capital, talents, and skills to develop and bring to production important new technologies and advanced weapons systems, aircraft, and missiles.

(b) The nation now confronts the challenge of working together to resolve issues related to base closure and reuse, and converting our defense dependent economic sector to meet the rigors of commercial competition. California industries and workers have earned their government's gratitude and deserve our assistance in this transition. Communities that have hosted military facilities require assistance as those facilities close or whose military population is significantly reduced due to reductions in military spending.

(c) Defense spending in California peaked at 60 billion dollars ($60,000,000,000) in 1988. Since then, it has decreased by 16 percent with the resulting loss of 126,000 jobs. The Commission on State Finance projects a further 22 percent reduction to 37 billion dollars ($37,000,000,000) in 1997, with a loss of another 81,000 jobs. California is expected to experience the most severe impact of defense cuts since 1994.

(d) California has experienced four rounds of base closures resulting in the closure or realignment of 29 bases since 1988. Additional bases may be considered for closure as part of another closure round by 2000.

(e) California lost more federal payroll jobs from its 29 military base closures under rounds one to four than all of the rest of the states put together. The reduced military payroll (military and civilian employees) in California is approximately 101,000 jobs. About 300,000 private sector defense industry jobs in California have been lost.

(f) California needs a coordinated base closure and defense conversion program within the state in order to expedite reuse and realignment, and to transition to a lower level of defense expenditures and peacetime economic pursuits. Similarly, this state needs to coordinate all efforts that can facilitate the retention of its remaining installations.

(g) Just as the state is a leader in the nation's defense effort, so it must now assume a leadership role in converting to a peacetime economy. That role will require a coordinated effort to ensure that California benefits from federal programs, assists local governments to plan and provide for needed services, encourages the development of new technologies and their application by California industries, provides worker retraining, and builds an infrastructure for the future.

(h) It is the intent of the Legislature that the state role in military base reuse, conversion, and retention be consolidated in the Trade and Commerce Agency.

SEC. 6. Section 15346.12 is added to the Government Code, to read:

15346.12. The agency shall establish, with the appropriation of additional resources for this purpose, a Defense Retention Grant Program to grant funds to communities with military bases to assist them in developing a retention strategy. The agency shall administer the grant program. It is the intent of the Legislature that the grant program shall begin with one million eight hundred thousand dollars ($1,800,000) in startup capital. The agency may make no grant in excess of fifty thousand dollars ($50,000) with the local community providing two-thirds matching funds or in-kind services. The structure, administration, and funding procedures of the grant program shall be submitted to the Legislature for review at least 90 days prior to making the first grant disbursement.

SEC. 7. Section 33334.27 is added to the Health and Safety Code, to read:

33334.27. (a) The Legislature finds and declares all of the following:

(1) The retention of the Travis Air Force Base within the County of Solano is crucial to the economic health of its surrounding region. If the closure of the Travis Air Force Base is not averted by using the powers set forth in this section, it will cause serious economic hardship throughout the State of California of an annual multibillion dollar expenditure budget, increased unemployment, deterioration of properties and land use, and undue disruption of the lives and activities of the people of the area. This concern is based in large part on an inadequate supply of affordable housing for low- and moderate-income persons and families employed by or serving at the Travis Air Force Base.

(2) To avoid serious economic hardship and accompanying blight, it is necessary to enact the act which adds this section, which shall apply only within the County of Solano and the Cities of Fairfield, Suisun City, and Vacaville, and which is adopted only for the purpose of retaining the Travis Air Force Base. In enacting this act, it is the policy of the Legislature to assist the County of Solano and the Cities of Fairfield, Suisun City, and Vacaville in their attempt to preserve the affected military facilities and installations for their continued use

as the Travis Air Force Base, and to protect and enhance these vital facilities by, among other things, ensuring an adequate supply of affordable housing in proximity to the Travis Air Force Base.

(3) The cost and availability of land, construction costs, geophysical and environmental constraints, household incomes, the market for affordable housing, commuting patterns, and fiscal and other related factors make it infeasible for a single community acting alone, limited to its own resources, to provide the entire supply of affordable housing necessary to ensure the retention of the Travis Air Force Base. It is, therefore, necessary and appropriate that the agencies of the County of Solano and the Cities of Fairfield, Suisun City, and Vacaville be permitted, under specified conditions, to pool their resources to retain the Travis Air Force Base. It is necessary that those agencies possess the limited ability to use their tax-increment moneys outside their individual communities for these limited purposes.

(b) The agencies for the County of Solano and the Cities of Fairfield, Suisun City, and Vacaville may create a separate joint powers agency pursuant to Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code, which joint powers agency shall have, and exercise, powers of an agency within the territorial jurisdiction of the City of Fairfield, Suisun City, the City of Vacaville or the unincorporated area of the County of Solano to provide housing for the retention of the Travis Air Force Base. Notwithstanding any provision of existing law, the joint powers agency shall not have the power to levy any tax. All land use, planning, and development decisions with regard to real property within the City of Fairfield, the City of Suisun City, the City of Vacaville or the unincorporated area of the County of Solano which is to be developed or redeveloped by the joint powers agency pursuant to this section shall continue to be under the control and jurisdiction of the legislative body or planning commission, as applicable, of the City of Fairfield, the City of Suisun City, the City of Vacaville, or the unincorporated area of the County of Solano.

(c) The powers of the joint powers agency shall be used in accordance with a "Travis Air Force Base Retention Program" to be formulated and approved by the joint powers agency consistent with this section. The Travis Air Force Base Retention Program shall not be implemented unless and until the legislative bodies of the County of Solano and the Cities of Fairfield, Suisun City, and Vacaville each adopts an ordinance approving the Travis Air Force Base Retention Program. The expenditure of tax-increment moneys outside of the territorial jurisdiction of each agency involved, as contemplated by that program, as well as the program itself, shall, upon the adoption of each ordinance, be deemed to be a part of each redevelopment plan for each redevelopment project generating the tax-increment moneys to be expended in carrying out the program, as if each redevelopment plan had been amended to include the program and

those expenditures. However, in adopting the ordinance, neither the legislative body nor the agency is required to comply with Article 12 (commencing with Section 33450) or any other provision of this part relating to the amendment of redevelopment plans. The joint powers agency may amend the Travis Air Force Base Retention Program from time to time. The procedure for amending the ordinance required by this section shall be the same as for adopting the ordinance under this section.

(d) As used in this section, "tax-increment moneys" shall mean all tax-increment moneys allocated to an agency, including, but not limited to, tax-increment moneys deposited in an agency's Low and Moderate Income Fund.

(e) Notwithstanding subdivision (c) of Section 33334.3 or Section 33670, an agency may use tax-increment moneys to develop housing outside of the territorial jurisdiction of the agency pursuant to this section and consistent with the provisions of a Travis Air Force Base Retention Program approved and adopted pursuant to this section, if each agency involved finds that no other reasonable means of financing this housing are available in sufficient amount. The Legislature finds and declares that the use of tax-increment funds pursuant to this section shall be conclusively deemed to be a benefit to the project area in which those funds were generated.

(f) Each of the following conditions shall be met before an agency may use tax-increment moneys to develop housing outside its territorial jurisdiction pursuant to this section or to lend, pay, or advance these funds to the joint powers agency pursuant to this section:

(1) The community in which the agency is located must have met, in the current or previous housing element cycle, at least 50 percent of its existing share of the region's affordable housing needs, as defined in Section 65684 of the Government Code, for very low income households.

(2) The community in which the housing will be developed shall be the City of Fairfield, the City of Suisun City, or the City of Vacaville.

(3) The joint powers agency shall enter into a mutually acceptable, binding agreement with the City of Fairfield, the City of Suisun City, or the City of Vacaville where the housing will be developed. The contract shall specify the terms and conditions under which the housing will be developed. The contract shall specify the responsibilities of the joint powers agency and the City of Fairfield, the City of Suisun City, or the City of Vacaville.

(4) The contract shall contain a provision that allows any taxpayer or resident of the County of Solano and the Cities of Fairfield, Suisun City, and Vacaville, the Attorney General, or any other interested person to enforce the terms of the contract.

(5) (A) Moneys from an agency's Low and Moderate Income Housing Fund shall be used in the City of Fairfield, the City of Suisun

City, or the City of Vacaville to pay for the costs of developing housing as permitted by subdivision (e) of Section 33334.2.

(B) Notwithstanding subparagraph (A), money from a Low and Moderate Income Housing Fund shall not be used for offsite improvements.

(6) (A) The joint powers agency or the City of Fairfield, the City of Suisun City, or the City of Vacaville shall not spend money from a Low and Moderate Income Housing Fund in any way which is inconsistent with the requirements of Section 33334.3.

(B) Notwithstanding subdivision (e) of Section 33334.3, the joint powers agency, the City of Fairfield, the City of Suisun City, or the City of Vacaville or the agency of the City of Fairfield, Suisun City, the City of Vacaville, or the County of Solano shall not spend money from a Low and Moderate Income Housing Fund for administrative costs, salaries, or wages, except for legal, architectural, and engineering costs and other salaries, wages, and costs directly related to the planning and execution of the development of the housing which is authorized by this section.

(7) Each of the agencies whose Low and Moderate Income Housing Fund moneys are to be expended pursuant to this section shall be in compliance with all applicable replacement housing requirements of this part.

(8) The maximum aggregate number of dwelling units developed with moneys transferred to the joint powers agency from the Low and Moderate Income Housing Funds of its member agencies pursuant to this section shall be no more than 500 dwelling units.

(9) No agency shall transfer to the joint powers agency pursuant to this section an amount more than:

(A) Fifty percent of the balance of its Low and Moderate Income Housing Fund moneys reflected in the accounts of the agency on June 30, 1997.

(B) Fifty percent of the total amount required by Sections 33334.2 and 33334.6 to be set aside by the agency in its Low and Moderate Income Housing Fund for all redevelopment projects for each fiscal year commencing with the 1997–98 fiscal year and for each fiscal year thereafter.

(10) The County of Solano and the Cities of Fairfield, Suisun City, and Vacaville shall each have a complete and adequate general plan, including a housing element that substantially complies with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(g) (1) At least 60 days before the date proposed for the approval of the contract pursuant to subdivision (f), the joint powers agency shall send the draft contract to the department for its review, comment, and recommendation.

(2) Upon receipt of a draft contract, the department shall solicit public comments from persons and organizations experienced in affordable housing issues. After soliciting and considering these

public comments, the department shall review the draft contract for its consistency with the requirements of this section. The department shall report its written findings and its recommendations to the joint powers agency and the Cities of Fairfield, Suisun City, and Vacaville, and the County of Solano, within 45 days of receiving the draft contract. The department may charge and the joint powers agency shall pay a fee that shall not exceed the department's estimated reasonable costs of complying with this section. The joint powers agency may pay this fee from Low and Moderate Income Housing Fund moneys.

(3) If the department finds that the draft contract is not consistent with the requirements of this section, the department may recommend changes to the draft contract to achieve that consistency. The department shall recommend that the joint powers agency approve the draft contract, approve the draft contract after making changes, or not approve the draft contract.

(4) If the department recommends against the approval of the draft contract, the joint powers agency shall not approve the contract. If the department recommends changes to the draft contract before its approval, the joint powers agency shall not approve the contract unless it makes the changes recommended by the department.

(h) The housing units to be built within the City of Fairfield, the City of Suisun City, or the City of Vacaville with Low and Moderate Income Housing Fund moneys transferred pursuant to this section shall be affordable to lower income households or very low income households, as those terms are defined in Sections 50052.5 and 50053.

(i) The joint powers agency shall not receive more than an aggregate total of two million dollars ($2,000,000) from the other agencies pursuant to this section.

(j) (1) If any housing occupied by persons or families of very low, low, or moderate income is destroyed by the development of housing pursuant to the authority of this section, displaced residents from the destroyed housing shall be provided with relocation benefits which result in the additional replacement housing payment required by Section 7264 of the Government Code, enabling the person to lease or rent a comparable replacement dwelling for a period not to exceed 96 months, instead of 48 months as required by Section 7264 of the Government Code.

(2) If any housing occupied by persons or families of very low, low, or moderate income is destroyed by the development of housing pursuant to the authority of this section, the destroyed housing shall be replaced with housing of the same or greater size and shall be affordable in direct proportion to the displaced income groups, and shall be provided simultaneously with the housing developed pursuant to the authority of this section.

(k) In the event the Travis Air Force Base relocates from its current location prior to the substantial commencement of

construction of the housing authorized to be developed pursuant to this section, all moneys from the Low and Moderate Income Housing Funds which have been transferred to the joint powers agency pursuant to this section shall be returned by the joint powers agency to the agencies that originally transferred the funds in ratable portion to the proportion of the transferred funds that were transferred from each agency. However, nothing in this subdivision shall require the joint powers agency to return any funds that have been expended or committed for the purposes of the joint powers agency or which are necessary to pay any indebtedness of the joint powers agency.

(*l*) The joint powers agency established pursuant to this section shall require, as a condition precedent to the expenditure of any tax-increment moneys to carry out the Travis Air Force Base Retention Program, that the real property on which the housing is developed pursuant to that program shall be burdened with covenants running with the land for the period and with the substance required by Section 33334.3. The joint powers agency shall also require that these covenants include a mechanism that shall ensure the continued availability of the dwelling units for very low or low-income persons and families for the period required by Section 33334.3 in the event the Travis Air Force Base relocates or, for any other reason, no longer uses these housing units, or, in the absence of this continued availability, implements a procedure that protects the joint powers agency's investment of moneys from Low and Moderate Income Housing Funds and provides for the pro rata return of the sales proceeds to the Low and Moderate Income Housing Funds of those agencies expending these funds to carry out the Travis Air Force Base Retention Program.

(m) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 2001, deletes or extends that date, or unless tax-increment moneys have, prior to that date, been received by the joint powers agency, in which case the date of repeal of this section shall be extended until the time that the joint powers agency shall expend these funds in accordance with this section. This repeal shall not affect any contract or covenant which shall have been entered into prior to January 1, 2001, to implement this section, and all contracts and covenants shall continue after the repeal date in full force and effect in accordance with their terms.

SEC. 8. The Legislature finds and declares that, because of the unique circumstances applicable only to the County of Solano and the Cities of Fairfield, Suisun City, and Vacaville relating to the issue of the retention of the Travis Air Force Base, a statute of general applicability cannot be enacted within the meaning of subdivision (b) of Section 16 of Article IV of the California Constitution. Therefore, this special statute is necessary.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning

of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that areas of this state that have been negatively impacted due to defense base closures and reductions are able to benefit from the programs implemented by this act, it is necessary that this act take effect immediately.

CHAPTER 953

An act to amend and supplement the Budget Act of 1998 (Chapter 324 of the Statutes of 1998), relating to state government, and making an appropriation therefor.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. There is hereby appropriated the sum of eleven million one hundred thousand dollars ($11,100,000) from the General Fund, in accordance with the following schedule:

(a) The sum of two million dollars ($2,000,000) to the State Department of Social Services, in augmentation of Item 5180-001-0001 of the Budget Act of 1998, for local food bank programs to purchase food, expand refrigeration space, and purchase vehicles and other equipment that will be directly used for the purchase, delivery, or distribution of food products, or for other uses that will allow food banks to increase the amount of food they can receive and distribute.

(b) The sum of five million dollars ($5,000,000) to the Department of Parks and Recreation, in augmentation of Item 3790-301-0001 of the Budget Act of 1998, for Stanford Mansion State Historical Park Preservation-preliminary plans, working drawings, and construction.

For purposes of this subdivision, the following provisions shall apply:

(1) The funds appropriated pursuant to this subdivision may be used for planning, working drawings, and/or construction for the preservation/restoration of the Leland Stanford Mansion State Historic Park, and shall be available for expenditure until June 30, 2001.

(2) These facilities may be used for entertaining by the Governor, including, but not limited to, official receptions, meetings, conferences, bill signings, and any other ceremonial functions deemed appropriate by the Governor. The ceremonial facilities of the mansion shall also be available to the leadership of the Legislature upon request and when not in conflict with the other primary functions of the facility.

(c) The sum of three hundred fifty thousand dollars ($350,000) to the Department of Parks and Recreation, in augmentation of Item 3790-102-0001 of the Budget Act of 1998, pursuant to Schedule (10) of that item, for the City of Cloverdale Senior Center.

(d) The sum of two million dollars ($2,000,000) to the California Transportation Commission, in augmentation of Item 2600-101-0001 of the Budget Act of 1998, for the North Coast Railroad Authority. For purposes of this subdivision, the following provisions shall apply:

(1) The funds appropriated by this subdivision shall be available for allocation by the California Transportation Commission to the North Coast Railroad Authority (NCRA) pursuant to the following:

(A) The funds shall be available to provide for the immediate and critical needs of the NCRA, including, but not limited to, the following:

(i) Implementing an accounting system that complies with commission requirements for receipt of state and federal funds.

(ii) Addressing environmental concerns raised by the Departments of Fish and Game, Toxic Substance Control, and Justice.

(iii) Payment to contractors and vendors for services rendered prior to June 30, 1998, excluding any contractual obligations to Railways, Inc.

(B) Any remaining funds shall be available for additional needs of the NCRA, including, but not limited to, the following:

(i) Necessary actions to meet the requirements of the compliance order of the Federal Rail Administration concerning the operation of the railroad.

(ii) Necessary capital improvements to safely operate and maintain the rail service.

(iii) Any other expenditure necessary to comply with the findings or recommendations of the commission or any other government agency with jurisdiction or involvement with NCRA activities.

(C) The funds appropriated by this subdivision shall not be used as repayment of the so-called "Q-Fund" loan.

(D) All funds allocated pursuant to this subdivision shall be subject to the conditions contained in the other provisions of Item 2600-101-0001 of the Budget Act of 1998.

(2) The California Transportation Commission shall report on or before December 31, 1999, to the Chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees of the Legislature on how the funds allocated pursuant to this subdivision have been expended by the North Coast Railroad Authority (NCRA) and any state agency that received an allocation of funds for expenditure.

(3) Funds appropriated by this subdivision shall be available for encumbrance by the California Transportation Commission until June 30, 2000.

(e) The sum of seven hundred fifty thousand dollars ($750,000) to the Department of Parks and Recreation, in augmentation of Item 3790-302-0001 of the Budget Act of 1998, pursuant to Schedule (3) of that item, for 90.FB.100-Pio Pico State Park: Restoration: preliminary plans, working drawings, and construction.

(f) The sum of one million dollars ($1,000,000) to the Wildlife Conservation Board, in augmentation of Item 3640-301-0001 of the Budget Act of 1998, pursuant to subdivision (j) of Provision 5 of that item, for the Bombay Project in the Santa Cruz Greenbelt.

CHAPTER 954

An act to amend Sections 66604.5, 69769, 69769.3, 69769.4, 69769.5, 69769.7, 69980, 69982, 69984, 69986, 69989, 69990, 71092, 88064, 89048, 89701, 89702, 89704, 89720, 89721, and 89760 of, to add Sections 69993.5 and 72670.5 to, to repeal Sections 76361.5, 76390, and 76391 of, to repeal and add Sections 76360 and 76361 of, the Education Code, to amend Section 19815 of the Government Code, to amend Section 24306 of the Revenue and Taxation Code, and to amend Section 1 of Chapter 851 of the Statutes of 1997, relating to education, and making an appropriation therefor.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 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 1998 Higher Education Omnibus Act.

SEC. 2. Section 66604.5 of the Education Code is amended to read:

66604.5. Each appointive trustee shall receive actual and necessary travel expenses and one hundred dollars ($100) for each day he or she is attending to official business.

SEC. 3. Section 69769 of the Education Code is amended to read:

69769. The commission shall establish a Loan Advisory Council. The Loan Advisory Council shall be composed of 17 members, appointed by the commission, composed of representatives of students, postsecondary educational institutions, eligible lenders, and participating secondary markets.

SEC. 4. Section 69769.3 of the Education Code is amended to read:

69769.3. (a) The Loan Advisory Council established pursuant to Section 69769 shall be composed of members appointed from the following groups:

(1) Four representatives of the lending community participating in the Federal Family Education Loan Program.

(2) One representative each from the University of California, the California State University, the California Community Colleges, a private nonprofit postsecondary education institution, and a private for-profit postsecondary education institution.

(3) One representative from the California Association of Student Financial Aid Administrators.

(4) Five student representatives from the same postsecondary segments listed in paragraph (2). In no event shall a student representative be appointed to serve simultaneously as the representative of more than one of these five postsecondary groups.

(5) One representative from a secondary market participating in the Federal Family Education Loan Program.

(6) One representative from the California Lenders for Education Association.

(b) The representatives appointed by the commission pursuant to subdivision (a) shall be selected by the commission from lists provided to its chair by each group described in that subdivision.

SEC. 5. Section 69769.4 of the Education Code is amended to read:

69769.4. In addition to the members appointed to the Loan Advisory Council pursuant to Section 69769.3, the United States Department of Education may appoint one nonvoting representative to the council who shall serve as liaison between that department and the council.

SEC. 6. Section 69769.5 of the Education Code is amended to read:

69769.5. The Loan Advisory Council shall review the activities and policies of the Federal Family Education Loan Program and shall regularly advise the commission of its findings and recommendations. The Loan Advisory Council may request information and data that it deems appropriate from the Student Aid Commission with respect to the Federal Family Education Loan Program or any other loan program administered by the commission.

SEC. 7. Section 69769.7 of the Education Code is amended to read:

69769.7. (a) The Loan Advisory Council shall annually elect a chair and a vice chair from its membership. Representatives who serve on, or are employed or retained by, the commission, and the nonvoting representative appointed by the United States Department of Education, if any, are ineligible for election to these positions.

(b) The chair of the Loan Advisory Council shall have the authority, in consultation with the chair of the commission, to convene meetings of the council. The chair shall also direct each council meeting and shall regularly present oral and written reports to the commission regarding the advice of the council. The vice chair of the Loan Advisory Council shall assume these responsibilities in the absence of the chair.

SEC. 8. Section 69980 of the Education Code is amended to read:

69980. As used in this article, the following terms have the following meanings, unless the context requires otherwise:

(a) "Act" or "Scholarshare trust" or "Scholarshare" means the Golden State Scholarshare Trust Act.

(b) "Administrative fund" means the funds used to administer the Golden State Scholarshare Trust Act.

(c) "Beneficiary" has the same meaning as "designated beneficiary," as provided in paragraph (1) of subsection (e) of Section 529 of the Internal Revenue Code of 1986, as amended by Section 211 of the Taxpayer Relief Act of 1997 (Public Law 105-34).

(d) "Benefits" means the payment of higher education expenses on behalf of a beneficiary by the Scholarshare trust during the beneficiary's attendance at an institution of higher education.

(e) "Commission" means the Student Aid Commission established pursuant to Section 69510.

(f) "Golden State Scholarshare Trust" or "Scholarshare trust" means the trust created pursuant to this act.

(g) "Institution of higher education" has the same meaning as "eligible educational institution," as provided in paragraph (5) of subsection (e) of Section 529 of the Internal Revenue Code of 1986, as amended by Section 211 of the Taxpayer Relief Act of 1997 (Public Law 105-34).

(h) "Participant" means an individual, firm, corporation, or state or local government agency, or a legal representative of an individual, firm, corporation, or state or local government agency who has entered into a participation agreement pursuant to this act for advance savings for higher education expenses on behalf of a beneficiary.

(i) "Participation agreement" means an agreement between a participant and the Scholarshare trust, pursuant to this act.

(j) "Program administrator" means the administrator of the Scholarshare trust appointed by the commission to administer and manage the trust.

(k) "Program fund" means the program fund established by this act, which shall be held as a separate fund within the Scholarshare trust.

(*l*) "Qualified higher education expenses" means the expenses of attendance at an institution of higher education as provided in paragraph (3) of subsection (e) of Section 529 of the Internal Revenue Code of 1986, as amended by Section 211 of the Taxpayer Relief Act of 1997 (Public Law 105-34), and as determined and certified by the institution of higher education in the same manner as prescribed in Title IV of the Higher Education Act of 1965 (20 U.S.C. Sec. 1087ll, as amended).

(m) "Tuition and fees" means the quarterly or semester charges imposed to attend an institution of higher education and required as a condition of enrollment.

SEC. 9. Section 69982 of the Education Code is amended to read:

69982. In addition to effectuating and carrying out all of the powers granted by this act, the commission shall have all powers reasonably necessary to carry out and effectuate the purposes, objectives, and provisions of this act pertaining to the Scholarshare trust, including, but not limited to, the power to do all of the following:

(a) Carry out studies and projections in order to advise participants regarding present and estimated future higher education expenses and the levels of financial participation in the trust required in order to enable participants to achieve their education funding objectives.

(b) Contract for goods and services and engage personnel as necessary, including consultants, actuaries, managers, counsel, and auditors for the purpose of rendering professional, managerial, and technical assistance and advice.

(c) Participate in any other way in any federal, state, or local governmental program for the benefit of the Scholarshare trust.

(d) Promulgate, impose, and collect administrative fees and charges in connection with transactions of the Scholarshare trust, and provide for reasonable service charges, including penalties for cancellations.

(e) Procure insurance against any loss in connection with the property, assets, or activities of the Scholarshare trust.

(f) Administer the funds of the Scholarshare trust.

(g) Procure insurance indemnifying any member of the commission from personal loss or liability resulting from a member's action or inaction as a member of the commission.

(h) Adopt reasonable regulations for the administration of the Scholarshare trust.

(i) Set minimum and maximum investment levels.

(j) (1) Except as otherwise provided in this section, the overall maximum investment level for a designated beneficiary shall not exceed the amount equivalent to the maximum estimated qualified higher education expenses, as defined by subdivision (*l*) of Section 69980 and established by the trust, that can be incurred by a beneficiary to obtain a baccalaureate degree at an institution of higher education in California for four years commencing in the year the majority of beneficiaries of that age are expected to be eligible to enroll in a higher education program for four years. The maximum investment level shall be published by the trust as a monetary amount by year group, in order to state contribution limits clearly and to encourage participation on behalf of beneficiaries who will attend all types of higher education institutions, both public and independent.

(2) Participants shall be permitted to make up payments, in full or in part, for years in which they were eligible to contribute, but did not, including years prior to the enactment of this section, for the

benefit of a designated beneficiary. Contributions by entities exempt from taxation pursuant to Section 501(c)(3) of the Internal Revenue Code and state and local government agencies operating bona fide scholarship programs for the benefit of beneficiaries to be named when the scholarships are awarded are not subject to maximum contribution limits.

SEC. 10. Section 69984 of the Education Code is amended to read:

69984. (a) (1) The commission shall segregate moneys received by the Scholarshare trust into two funds, which shall be identified as the program fund and the administrative fund. Notwithstanding Section 13340 of the Government Code, the program fund is hereby continuously appropriated, without regard to fiscal years, to the commission for the purposes of this article. Funds in the administrative fund shall be available for expenditure, upon appropriation, for the purposes specified in this article.

(2) (A) The trust shall separately account for any moneys received by an entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code or a state or local government agency, depositing the money for the benefit of a beneficiary to be named later pursuant to the operation of a bona fide scholarship program.

(B) There is hereby created the Scholarshare Investment Board, which shall consist of the Treasurer, the Director of Finance, and the chief executive officer of the commission. The Treasurer shall serve as chair of the board. The board shall annually prepare and adopt a written statement of investment policy. The board shall consider the statement of investment policy and any changes in the investment policy at a public hearing. The board shall approve the investment management entity or entities consistent with subparagraph (C). Not later than 30 days after the close of each month there shall be placed on file for public inspection during business hours a report with respect to investments made pursuant to this section and a report of deposits in financial institutions. The investment manager shall report the following information to the board within 30 days following the end of each month:

(i) The type of investment, name of the issuer, date of maturity, par and dollar amount invested in each security, investment, and money within the program fund.

(ii) The weighted average maturity of the investments within the program fund.

(iii) Any amounts in the program fund that are under the management of private money managers.

(iv) The market value as of the date of the report and the source of this valuation for any security within the program fund.

(v) A description of the compliance with the statement of investment policy.

(C) Moneys in the program fund may be invested or reinvested by the Treasurer or may be invested in whole or in part under

contract with private money managers, as determined by the Scholarshare Investment Board.

(b) Transfers may be made from the program fund to the administrative fund for the purpose of paying operating costs associated with administering the trust and as required by this act. On an annual basis, expenditures from the administrative fund shall not exceed more than 1 percent of the total program fund. All costs of administration of the trust shall be paid out of the administration fund.

(c) All moneys paid by participants in connection with participation agreements shall be deposited as received into the program fund and shall be promptly invested and accounted for separately. Deposits and interest thereon accumulated on behalf of participants in the program fund of the Scholarshare trust may be used for payments to any institution of higher education.

SEC. 10.5. Section 69986 of the Education Code is amended to read:

69986. For all purposes of California law, the following apply:

(a) The participant shall retain ownership of all contributions made under any participation agreement up to the date of utilization for payment of higher education costs for the beneficiary, and all interest derived from the investment of the payments made by the participant shall be deemed to be held in trust for the benefit of the beneficiary. Neither the contributions, nor any interest derived therefrom, may be pledged as collateral for any loan.

(b) In the event the participation agreement is canceled prior to payment of higher education expenses for the beneficiary, the participant shall retain ownership of all contributions made under the participation agreement and reversionary right to receive interest on all the contributions at the rate of interest at which the contributions were invested. If cancellation occurs, the program administrator shall impose a penalty on any interest earned that is more than a de minimis amount.

(c) Notwithstanding subdivision (b), if there has been a decrease in the value of the funds in a participant's account at the time of cancellation of the participation agreement, the participant shall not have ownership rights to any amount above the market value of the funds in the account at the time of cancellation.

(d) Program administrators shall develop adequate measures to prevent contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the beneficiary or in excess of the maximum contribution limits provided for herein.

(e) If the beneficiary graduates from an institution of higher education and has no intention of further attendance at an institution of higher education, and a balance remains in the participant's account, then the program administrator shall pay the balance to the

participant. The administrator shall impose a penalty that is more than de minimis.

(f) Program administrators shall develop a method to make payment of qualified higher education expenses directly to higher education institutions for the benefit of designated beneficiaries and to control for fraud under any direct reimbursement method of payment that it may adopt. The institution of higher education shall obtain ownership of the payments made for the higher education expenses paid to the institution at the time each payment is made to the institution.

(g) Any amounts paid pursuant to the Golden State Scholarshare Trust that are not listed in this section shall be owned by the trust.

(h) A participant may transfer ownership rights to another eligible participant, including, but not limited to, a gift of the ownership rights to an eligible minor beneficiary pursuant to this act. The transfer shall be effected and the property distributed in accordance with administrative regulations adopted by the commission or the terms of the participation agreement.

SEC. 11. Section 69989 of the Education Code is amended to read:

69989. (a) The commission shall submit an annual audited financial report, prepared in accordance with generally accepted accounting principles, on the operations of the Scholarshare trust by September 30 to the Governor, the Controller, the State Auditor, and the Legislature. The annual audit shall be made by an independent certified public accountant and shall include, but not be limited to, direct and indirect costs attributable to the use of outside consultants, independent contractors, and any other persons who are not state employees. Any contributions to the Scholarshare trust fund that are not directed to a specified beneficiary shall be accounted for and treated separately in the annual audit.

(b) The annual audit shall be supplemented by the following information prepared by the commission:

(1) Any studies or evaluations prepared in the preceding year.

(2) A summary of the benefits provided by the trusts including the number of participants and beneficiaries in the trust.

(3) Any other information that is relevant in order to make a full, fair, and effective disclosure of the operations of the Scholarshare trust.

SEC. 12. Section 69990 of the Education Code is amended to read:

69990. (a) The trust shall provide an annual listing to the Franchise Tax Board on magnetic tape or other machine-readable form, and in a manner agreed upon by the Franchise Tax Board and the Scholarshare trust, of all distributions, including payment of benefits and refunds, to any individual with respect to an interest in a participation agreement. The listing shall include the names, addresses, tax identification numbers, and type and amounts of each distribution, including interest earned and penalties imposed. The taxpayer's identification numbers obtained through the participation

agreement process shall be used exclusively for state and federal tax administration purposes.

(b) The trust shall make a report to each participant or beneficiary of the type and amount of each distribution, including payment of benefits and refunds.

(c) The trust also shall report annually by March 1 to each participant or beneficiary all of the following:

(1) The value of the beneficiary's account.

(2) The interest earned thereon.

(3) The rate of return of the investments in the beneficiary's account for that reporting period.

(4) The investment goal the participant will achieve if all future contributions with respect to that beneficiary are timely made.

(5) The amount of any missed contributions that the participant is eligible to make up.

(6) Information regarding the trends in qualified higher education expenses at the state's public segments of higher education, which shall include, but need not be limited to, the following:

(A) The actual increase or decrease in qualified higher education expenses in the prior year.

(B) To the extent possible, any proposals by the segments to increase or decrease fees or tuition in the next fiscal year.

(C) To the extent possible, any proposals by the Legislature or the Governor to increase or decrease fees or tuition in the next fiscal year.

(D) The names of the State Senator and Assembly Member who represent the district in which the participant or beneficiary resides and a business address and telephone number where they may be reached.

(d) The trust, as an advocate for affordable higher education opportunities for participants and beneficiaries of the program, shall also provide a means for participants or beneficiaries to express concerns or comments regarding the Scholarshare trust program and any information required to be reported by this section.

SEC. 13. Section 69993.5 is added to the Education Code, to read:

69993.5. The Student Aid Commission may adopt regulations for the purposes of this chapter as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For the purposes of the Administrative Procedure Act, including Section 11349.6 of the Government Code, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, any regulation adopted pursuant to this section shall not remain in effect more than 180 days unless the

Student Aid Commission complies with all provisions of the Administrative Procedure Act (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. 14. Section 71092 of the Education Code is amended to read:

71092. (a) The board of governors shall employ and fix the compensation, in accordance with law, of assistants, clerical, and other employees as it deems necessary for the effective conduct of the work of the board and the chancellor's office.

(b) Notwithstanding Section 19849.5 of the Government Code, the Board of Governors of the California Community Colleges shall designate the headquarters for each of its employees, except as provided in Section 71004.

SEC. 15. Section 72670.5 is added to the Education Code, to read:

72670.5. (a) The Board of Governors of the California Community Colleges may establish auxiliary organizations for the purpose of providing supportive services and specialized programs for the general benefit of the mission of the California Community Colleges.

(b) As used in this article:

(1) "Auxiliary organization" may include, but is not limited to, the following entities:

(A) Any entity whose governing instrument provides in substance both of the following:

(i) That its purpose is to promote or assist the Board of Governors of the California Community Colleges, or to receive gifts, property, and funds to be used for the benefit of the Board of Governors of the California Community Colleges or any person or organization having an official relationship therewith.

(ii) That any of its directors, governors, or trustees are either appointed or nominated by, or subject to, the approval of the Board of Governors of the California Community Colleges or an official of the California Community Colleges, or selected, ex officio, from the membership of the Board of Governors or the administrative staff of the California Community Colleges.

(B) Any entity which, exclusive of the foregoing subdivisions of this section, is designated as an auxiliary organization by the Board of Governors of the California Community Colleges.

(2) "District governing board" includes the Board of Governors of the California Community Colleges, unless the context requires otherwise.

(c) Any agreement between the Board of Governors of the California Community Colleges and an auxiliary organization established pursuant to this section shall provide for full reimbursement from the auxiliary organization to the Board of Governors of the California Community Colleges for any services

performed by the employees of the board under the direction of, or on behalf of, the auxiliary organization.

SEC. 16. Section 76360 of the Education Code is repealed.

SEC. 17. Section 76360 is added to the Education Code, to read:

76360. (a) The governing board of a community college district may require students in attendance and employers of the district to pay a fee, in an amount not to exceed forty dollars ($40) per semester and twenty dollars ($20) per intersession to be established by the board, for parking services. The fee shall only be required of students and employees using parking services and shall not exceed the actual cost of providing parking services.

To encourage ridesharing and carpooling, for a student who certifies, in accordance with procedures established by the board, that he or she regularly has two or more passengers commuting to the community college with him or her in the vehicle parked at the community college, the fee shall not exceed thirty dollars ($30) per semester and ten dollars ($10) per intersession.

(b) The governing board may require payment of a parking fee at a campus in excess of the limits set forth in subdivision (a) for the purpose of funding the construction of on-campus parking facilities if both of the following conditions exist at the campus:

(1) The full-time equivalent (FTES) per parking space on the campus exceeds the statewide average FTES per parking space on community college campuses.

(2) The market price per square foot of land adjacent to the campus exceeds the statewide average market price per square foot of land adjacent to community college campuses.

If the governing board requires payment of a parking fee in excess of the limits set forth in subdivision (a), the fee may not exceed the actual cost of constructing a parking structure.

(c) Students who receive financial assistance pursuant to any programs described in subdivision (g) of Section 76300 shall be exempt from parking fees imposed pursuant to this section that exceed twenty dollars ($20) per semester.

(d) The governing board of a community college district may also require the payment of a fee, to be established by the governing board, for the use of parking services by persons other than students and employees.

(e) All parking fees collected shall be deposited in the designated fund of the district in accordance with the California Community Colleges Budget and Accounting Manual and shall be expended only for parking services or for purposes of reducing the costs to students and employees of the college of using public transportation to and from the college.

(f) Fees collected for use of parking services provided for by investment of student body funds under the authority of Section 76064 shall be deposited in a designated fund in accordance with the

California Community Colleges Budget and Accounting Manual for repayment to the student organization.

(g) "Parking services," as used in this section, means the purchase, construction, and operation and maintenance of parking facilities for vehicles and motor vehicles as defined by Sections 415 and 670 of the Vehicle Code.

SEC. 18. Section 76361 of the Education Code is repealed.

SEC. 19. Section 76361 is added to the Education Code, to read:

76361. (a) The governing board of a community college district may require students in attendance and employees at a campus of the district to pay a fee for purposes of partially or fully recovering transportation costs incurred by the district or of reducing fares for services provided by common carriers or municipally owned transit systems to these students and employees.

(b) Fees authorized by subdivision (a) for transportation services may be required to be paid only by students and employees using the services, or, in the alternative, by either of the following groups of people:

(1) Upon the favorable vote of a majority of the students and a majority of the employees of a campus of the district, who voted at an election on the question of whether or not the governing board should require all students and employees at the campus to pay a fee for transportation services for a period of time to be determined by the governing board of the district, the fees may be required to be paid by all students and all employees of the campus of the community college district.

(2) Upon the favorable vote of a majority of the students at a campus of the district, who voted at an election on the question of whether or not the governing board should require all students to pay a fee for transportation services for a period of time to be determined by the governing board of the district, the fees may be required to be paid by all students at the campus of the community college district. However, the employees shall not be entitled to use the services.

(c) If, pursuant to this section, a fee is required of students for transportation services, any fee required of a part-time student shall be a pro rata lesser amount than the fee charged to full-time students, depending on the number of units for which the part-time student is enrolled. In addition, a governing board maintaining transportation services shall adopt rules and regulations governing the exemption of low-income students from required fees, and may adopt rules and regulations that provide for the exemption of others.

(d) The total fees to be established periodically by the governing board pursuant to this section shall not exceed the amount necessary to reimburse the district for transportation costs incurred by the district in providing the transportation service. The sum of the fee authorized pursuant to this section for transportation services and the fee authorized pursuant to Section 76360 for parking services shall

not exceed sixty dollars ($60) per semester or thirty dollars ($30) per intersession, or the proportionate equivalent for part-time enrollment.

(e) The governing board of a community college district also may require the payment of a fee, to be fixed by the governing board, for the use of transportation services by persons other than students and employees.

(f) This section does not apply to, and no fee shall be charged for, on-campus shuttles or other transportation services operated on a campus or between the campus and parking facilities owned by the district.

SEC. 20. Section 76361.5 of the Education Code is repealed.

SEC. 21. Section 76390 of the Education Code is repealed.

SEC. 22. Section 76391 of the Education Code is repealed.

SEC. 23. Section 88064 of the Education Code is amended to read:

88064. (a) To be eligible for appointment or reappointment to the commission, a person shall meet both of the following requirements:

(1) Be a registered voter and resident within the territorial jurisdiction of the community college district.

(2) Be a known adherent to the principle of the merit system.

(b) No member of the governing board of any community college district or a county board of education shall be eligible for appointment, reappointment, or continuance as a member of the commission. During his or her term of service, a member of the commission shall not be an employee of the district.

(c) As used in this section, "known adherent to the principle of the merit system," with respect to a new appointee, shall mean a person who by the nature of his or her prior public or private service has given evidence that he or she supports the concept of employment, continuance in employment, in-service promotional opportunities, and other related matters on the basis of merit and fitness. As used in this section, "known adherent to the principle of the merit system," with respect to a candidate for reappointment, shall mean a commissioner who has clearly demonstrated through meeting attendance and actions that he or she does, in fact, support the merit system and its operation.

SEC. 23.5. Section 89048 of the Education Code is amended to read:

89048. Notwithstanding Article 1 (commencing with Section 11000) of Chapter 1 of Part 1, Article 2 (commencing with Section 14660) of Chapter 2 of Part 5.5, and Part 11 (commencing with Section 15850), of Division 3 of Title 2 of the Government Code, or any other provision of law to the contrary, the trustees may perform the following functions, without prior approval of any other state department or agency, when necessary to carry out the purposes of the California State University:

(a) Acquire easements or rights-of-way necessary for the proper utilization of real property of the California State University.

(b) Grant and convey in the name of the California State University easements and rights-of-way across property belonging to the California State University subject to the conditions, limitations, restrictions, and reservations the trustees determine are in the best interests of the California State University.

(c) Quitclaim the right, title, and interest of the California State University in and to easements and rights-of-way owned by the California State University which the trustees determine are no longer needed for California State University purposes.

(d) Sell or exchange any personal property belonging to the California State University if the trustees determine that the sale or exchange is in the best interests of the California State University. Transactions under this subdivision shall be for consideration based on fair market values.

(e) Lease any real property for the use of the California State University.

(f) Sell, exchange, or otherwise dispose of real property acquired from revenues generated by the parking and housing programs in the California State University, to a recognized auxiliary organization of the California State University, as authorized by Section 89901 of the Education Code. The sale, exchange, or other disposition shall be consistent with the requirements of any indenture or other agreement to which the trustees are a party. Transactions under this subdivision shall be for consideration based on the fair market value of the property to be sold, exchanged, or otherwise disposed of, and shall be subject to the following conditions:

(1) Where more than one auxiliary organization of the California State University expresses interest in acquiring the property, the sale, exchange, or other form of disposal shall be awarded to the highest responsible bidder. The net present value of the projected proceeds of a bid shall be used to determine the highest responsible bidder, where applicable.

(2) When the real property for sale is an improvement situated on land purchased with funds not generated by the parking or housing programs of the California State University, rights to the land upon which the improvement is situated, and access thereto, shall be leased and not sold or exchanged to the acquiring party.

(3) When the real property for sale includes land purchased with funds generated by the parking or housing programs of the California State University, the property shall have at least one border with property that is not owned by the California State University.

(g) Acquire, when it is in the best interests of the state, real property with revenues generated by the parking and housing programs of the California State University.

(1) Any acquisition of real property carried out pursuant to this subdivision shall be reported annually to the Joint Legislative Budget

Committee and to the Department of Finance by January 5 of each year.

(2) Any acquisition carried out pursuant to this subdivision shall include relocation assistance, when appropriate.

SEC. 24. Section 89701 of the Education Code is amended to read:

89701. (a) The trustees are authorized to acquire, pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code) or by lease or other means, real property and to construct, operate, and maintain motor vehicle parking facilities thereon for state university officers, employees, students, or other persons. The trustees may prescribe the terms and conditions of the parking, and of parking on facilities existing on the effective date of this section, including the payment of parking fees in the amounts and under the circumstances determined by the trustees. Varying rates of parking fees may be established for different localities or for different parking facilities. In determining rates of parking fees, the trustees may consider the rates charged in the same locality by other public agencies and by private employers for employee parking, and the rates charged to students by other universities and colleges.

(b) Except as otherwise provided in this section, revenues received by the trustees from any of the motor vehicle parking facilities, as well as from all parking facilities existing on the effective date of this section, may be transmitted to the Treasurer and, if transmitted, shall be deposited by that officer in the State Treasury to the credit of the State University Parking Revenue Fund, which fund is hereby created. The trustees may pledge all or any part of the revenues in connection with bonds or notes issued pursuant to the State University Revenue Bond Act of 1947 (Article 2 (commencing with Section 90010) of Chapter 8), in which case the revenues shall be deposited, transmitted, and used in the manner provided by that act. All revenues received by the trustees from parking facilities, to the extent not pledged in connection with bonds or notes issued pursuant to the State University Revenue Bond Act of 1947, are hereby appropriated, without regard to fiscal years, to the trustees for the acquisition, construction, operation, and maintenance of motor vehicle parking facilities on real property acquired hereunder or on real property otherwise under the jurisdiction of the trustees, and for the study, development, enhancement, operation, and maintenance of alternate methods of transportation for officers, students, and employees of the California State University. The trustees shall allocate the funds for the construction of parking facilities for each of the California State University campuses only after programs incorporating alternate methods of transportation have been thoroughly investigated and considered, as determined by the alternative transportation committees of each campus and the trustees, in consultation with students and local government officials. Moneys in the State University Parking Revenue Fund may be

invested by the Treasurer, upon approval of the trustees, in those eligible securities listed in Section 16430 of the Government Code. All interest or other earnings received pursuant to the investments shall be deposited to the credit of the State University Parking Revenue Fund.

(c) The Legislature, by this section, does not intend to authorize the institution of a private parking program unrelated to state purposes in competition with private industry.

(d) If any provision of this section is in conflict with any provision of a memorandum of understanding reached pursuant to Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if one or more 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. 25. Section 89702 of the Education Code is amended to read:

89702. (a) The Trustees of the California State University may acquire, pursuant to the Property Acquisition Law (Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code) or by lease or other means, real property and may construct and improve student health centers entirely or in part by the use of funds acquired pursuant to this section.

(b) The trustees may prescribe under Section 89700 a fee to provide for the acquisition, construction, and improvement of the facilities, in the amounts and under the circumstances as may be determined by the trustees.

(c) Except as otherwise provided in this section, revenues received by the trustees from the facilities fee may be transmitted to the Treasurer and, if transmitted, shall be deposited by that officer in the State Treasury to the credit of the State University Facilities Revenue Fund, which fund is hereby created. The trustees may pledge all or any part of these revenues in connection with bonds or notes issued pursuant to the State University Revenue Bond Act of 1947 (Article 2 (commencing with Section 90010) of Chapter 8), in which case the revenues shall be deposited, transmitted, and used in the manner provided by that law. All revenues received by the trustees from the facilities fee, to the extent not pledged in connection with bonds or notes issued pursuant to the State University Revenue Bond Act of 1947, are hereby appropriated, without regard to fiscal years, to the trustees for the acquisition, construction, and improvement of student health centers on real property acquired pursuant to this section or on real property otherwise under the jurisdiction of the trustees. Moneys in the State University Facilities Revenue Fund may be invested by the Treasurer, upon approval of the trustees, in those eligible securities listed in Section 16430 of the Government Code. All interest or other

earnings received pursuant to the investments shall be deposited to the credit of the State University Facilities Revenue Fund.

(d) All capital outlay projects in excess of sixty-five thousand dollars ($65,000) to be constructed with revenue from the fee established pursuant to this section shall be approved by the Legislature.

SEC. 26. Section 89704 of the Education Code is amended to read:

89704. (a) Notwithstanding any other provision of law to the contrary, revenues received by the Trustees of the California State University from extension programs, special session, and other self-supporting instructional programs, including but not limited to, fees and charges required by the trustees, may be transmitted to the Treasurer and, if transmitted, shall be deposited by that officer in the State Treasury to the credit of the State University Continuing Education Revenue Fund, which fund is hereby created, and which is hereby designated as successor to the State College Extension Program Revenue Fund.

(b) All revenues are hereby appropriated, without regard to fiscal years, to the trustees for the support and development of self-supporting instructional programs of the California State University. However, proposed expenditures or obligation to be incurred during any fiscal year from the State University Continuing Education Revenue Fund shall be contained in the budget submitted for that fiscal year by the Governor pursuant to Section 12 of Article IV of the Constitution, and shall be subject to Article 2 (commencing with Section 13320) of Chapter 3 of Part 3 of Division 3 of Title 2 of the Government Code.

(c) Moneys in the State University Continuing Education Revenue Fund may be invested by the Treasurer, upon approval of the trustees, in those eligible securities listed in Section 16430 of the Government Code. All interest or other earnings received pursuant to the investments shall be deposited to the credit of the State University Continuing Education Revenue Fund.

SEC. 27. Section 89720 of the Education Code is amended to read:

89720. The trustees may accept on behalf of the state any gift, bequest, devise, or donation of real or personal property whenever the gift and the terms and conditions thereof will aid in carrying out the primary functions of the California State University as specified in subdivision (b) of Section 66010.4. Neither Section 11005 of the Government Code nor any other law requiring approval by a state officer of gifts, bequests, devises, or donations shall apply to these gifts, bequests, devises, or donations. These gifts, bequests, devises, or donations, and the disposition thereof, shall be annually reported to the California Postsecondary Education Commission, the Joint Legislative Budget Committee, and the Department of Finance by January 5 of each year.

Notwithstanding Sections 11005.2 and 14664 of the Government Code or any other law to the contrary, the trustees may sell or

exchange interests in real property received pursuant to this section when, in the judgment of the trustees, the sale or exchange is in the best interests of the California State University. No sale or exchange of an interest in real property made pursuant to this section shall exceed ten million dollars ($10,000,000) per transaction.

Notwithstanding Sections 11005 and 15853 of the Government Code or any other provision of law to the contrary, the trustees may purchase interests in real property from moneys received pursuant to this section, including those moneys received from the sale or exchange of interests in real property pursuant to this section. Any such purchase shall be consistent with any restrictions placed upon the gift, bequest, devise, or donation and shall be in the best interests of the California State University, as determined by the trustees.

No interest in any real property that is part of a main campus of any of the institutions of the California State University listed in Section 89001 shall be sold or exchanged pursuant to this section.

Any sale or exchange of interests in real property carried out pursuant to this section shall be reported annually to the California Postsecondary Education Commission, the Joint Legislative Budget Committee, and the Department of Finance, by January 5 of each year.

SEC. 28. Section 89721 of the Education Code is amended to read:

89721. Notwithstanding any other provision of law to the contrary, the chief fiscal officer of each campus of the California State University shall deposit into and maintain in local trust accounts or in trust accounts in accordance with Sections 16305 to 16305.7, inclusive, of the Government Code, or in the California State University Trust Fund, moneys received in connection with the following sources or purposes:

(a) Gifts, bequests, devises, and donations received under Section 89720.

(b) Any student loan or scholarship fund program, including but not limited to, student loan programs of the state, federal government (including programs referred to in Section 89723), local government, or private sources.

(c) Advance payment for anticipated expenditures or encumbrances in connection with federal grants or contracts.

(d) Room, board, and similar expenses of students enrolled in the international program of the California State University.

(e) Cafeteria replacement funds.

(f) Miscellaneous receipts in the nature of deposits subject to return upon approval of a proper application.

(g) Fees and charges for services, materials, and facilities authorized by Section 89700 where these fees or charges are required of those persons who, at their option, use the services or facilities, or are provided the materials, for which the fees or charges are made. Fees and charges so received and deposited shall be used solely to meet the costs of providing these services, materials, and facilities.

(h) Fees for instructionally related activities as defined by the trustees and as authorized by Section 89700 and revenues derived from the conduct of the instructionally related activities. The trustees shall have all authority necessary to administer and use the fees and revenues received and deposited to support such instructionally related activities.

(i) Fees for parking, health facilities or health services, and for extension programs, special sessions, and other self-supporting instructional programs.

(j) Revenue received by the trustees from the California State Lottery Education Fund pursuant to Section 8880.5 of the Government Code.

(k) Moneys received by the trustees for research, workshops, conferences, institutes, and special projects.

SEC. 29. Section 89760 of the Education Code is amended to read:

89760. (a) The trustees may transfer money from one special fund to another special fund or to the general fund in order to meet the commitments of the California State University if the transferred moneys are returned to the special fund of origin in time to fulfill the purposes of the special fund. Interest shall be paid on all money transferred to another special fund or to the general fund at a rate determined by the trustees to be the current earning rate of the fund from which the money was transferred.

(b) "Special fund," as used in this section, means enterprise and trust funds of the California State University and includes any fund subject to the State University Revenue Bond Act of 1947 (Article 2 (commencing with Section 90010) of Chapter 8 of Part 55).

(c) This section does not authorize any transfer or loan of money to or from any special fund or the General Fund if the transfer or loan would impair a contractual obligation of the trustees, including, but not necessarily limited to, contractual obligations incurred by the trustees pursuant to the State University Revenue Bond Act of 1947.

SEC. 30. Section 19815 of the Government Code is amended to read:

19815. As used in this part:

(a) "Department" means the Department of Personnel Administration.

(b) "Director" means the Director of the Department of Personnel Administration.

(c) "Division" means the Division of Labor Relations.

(d) "Employee" or "state employee," except where otherwise indicated, means employees subject to the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512), Division 4, Title 1), supervisory employees as defined in subdivision (g) of Section 3513, managerial employees as defined in subdivision (e) of Section 3513, confidential employees as defined in subdivision (f) of Section 3513, employees of the Legislative Counsel Bureau, employees of the Bureau of State Audits, employees of the Public Employment

Relations Board, conciliators employed by the State Conciliation Service within the Department of Industrial Relations, employees of the Department of Personnel Administration, professional employees of the Department of Finance engaged in technical or analytical state budget preparation other than audit staff, intermittent athletic inspectors who are employees of the State Athletic Commission, professional employees in the Personnel/Payroll Services Division of the Controller's office and all employees of the executive branch of government who are not elected to office.

SEC. 31. Section 24306 of the Revenue and Taxation Code is amended to read:

24306. (a) For purposes of this section, the following terms have the following meanings, as provided in the Golden State Scholarshare Trust Act (Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code):

(1) "Beneficiary" has the meaning set forth in subdivision (c) of Section 69980 of the Education Code.

(2) "Benefit" has the meaning set forth in subdivision (d) of Section 69980 of the Education Code.

(3) "Participant" has the meaning set forth in subdivision (h) of Section 69980 of the Education Code.

(4) "Participation agreement" has the meaning set forth in subdivision (i) of Section 69980 of the Education Code.

(5) "Scholarshare trust" has the meaning set forth in subdivision (f) of Section 69980 of the Education Code.

(b) Except as otherwise provided in subdivision (c), gross income of a participant shall not include any of the following:

(1) Any earnings under a Scholarshare trust, or a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(2) Contributions to the Scholarshare trust on behalf of a beneficiary shall not be includable as gross income of that beneficiary.

(c) (1) Any distribution under a Scholarshare trust participation agreement shall be includable in the gross income of the distributee in the manner as provided under Section 72 of the Internal Revenue Code, as modified by Section 24272.2, to the extent not excluded from gross income under any other provision of this part. For purposes of applying Section 72 of the Internal Revenue Code, the following apply:

(A) All Scholarshare trust accounts of which an individual is a beneficiary shall be treated as one account, except as otherwise provided.

(B) All distributions during an income year shall be treated as one distribution.

(C) The value of the participation agreement, income on the participation agreement, and investment in the participation

agreement shall be computed as of the close of the calendar year in which the income year begins.

(2) A contribution by a for-profit or nonprofit entity, or by a state or local government agency, for the benefit of an owner or employee of that entity or a beneficiary whom the owner or employee has the power to designate, including the owner or employee's minor children, shall be included in the gross income of that owner or employee in the year the contribution is made.

(3) For purposes of this subdivision, "distribution" includes any benefit furnished to a beneficiary under a participation agreement, as provided in Article 19 (commencing with Section 69980) of Chapter 2 of Part 42 of the Education Code.

(4) (A) Paragraph (1) shall not apply to that portion of any distribution that, within 60 days of distribution, is transferred to the credit of another beneficiary under the Scholarshare trust who is a "member of the family," as that term is used in Section 2032A(e)(2) of the Internal Revenue Code, of the former beneficiary of that Scholarshare trust.

(B) Any change in the beneficiary of an interest in the Scholarshare trust shall not be treated as a distribution for purposes of paragraph (1) if the new beneficiary is a "member of the family," as that term is used in Section 2032A(e)(2) of the Internal Revenue Code, of the former beneficiary of that Scholarshare trust.

SEC. 32. Section 1 of Chapter 851 of the Statutes of 1997 is amended to read:

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

(a) The general welfare and well-being of the State of California are directly related to the educational levels and skills of the citizens of the state. Therefore, a vital and valid public purpose of the state is served by the creation and implementation of programs that encourage and make possible the attainment of higher education by the greatest number of citizens of the state.

(b) The Legislature finds, declares, and recognizes that the State of California has limited resources to provide additional programs for higher education funding and that the continued operation and maintenance of the institutions of higher education in California and the general welfare of the citizens and the state will be enhanced by the creation of a program pursuant to which citizens and others may invest money in a public trust for future application to the payment of higher education expenses in the state and elsewhere and that the creation of a means of encouragement of citizens in the investment of funds for future higher education application represents the carrying out of a valid and vital public purpose of the State of California.

(c) In order to make available to the citizens of the state an opportunity to fund future higher education needs for beneficiaries with certain public assistance, and to ensure that California takes advantage of recent changes in tax law that will benefit this state's

citizens, it is necessary that a public trust be established in which the citizens of the state and others may invest moneys for future educational use.

(d) A program, with a minimal impact on the state treasury, that encourages contributions in an amount equivalent to the maximum estimated qualified higher education expenses, as defined by subdivision (*l*) of Section 69980 and as established by the trust, that can be incurred by a beneficiary to obtain a baccalaureate degree at an institution of higher education in California for four years commencing in the year the majority of beneficiaries of that age are expected to be eligible to enroll in a higher education program, will assist those middle-class families and students finding it hardest to pay for higher education due to lack of savings, the high cost of loans, and the scarcity of grants and scholarships. A savings program will further encourage students to save for their own education at levels students can afford, will encourage the lifetime habit of saving for things that are important, and will foster appreciation of the value of investing in one's own education.

(e) A program that encourages nonprofit organizations or state or local government agencies, including instrumentalities thereof, to accumulate funds for the awarding of scholarships for recipients to be designated in the future will benefit even the lowest income families and students in this state, who otherwise are unable to save sufficient amounts to pay for the expense of higher education.

(f) It is the intent of the Legislature to create the Golden State Scholarshare Trust as a self-sustaining trust, paying all costs of administration out of earnings on moneys on deposit therein. The implementation and effectuation of the Golden State Scholarshare Trust constitutes the carrying out of a valid and vital public purpose.

CHAPTER 955

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 September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. (a) The sum of two million two hundred sixteen thousand eight hundred sixty-three dollars and forty-one cents ($2,216,863.41) is hereby appropriated from the General Fund to the Executive Officer 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 item schedules identified in the schedule set forth in subdivision (b), those payments shall be made from the funds appropriated in the 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 (0602)	$90,000.00
Total for Fund: Bank and Corporation Tax Fund (0084)	$3,971.81
Total for Fund: California Residential Earthquake Recovery Fund (0285)	$34.14
Total for Fund: Employment Development Contingent Fund (0185)	$6,239.44
Total for Fund: Estate Tax Fund (0085)	$1,216.97
Total for Fund: Federal Trust Fund (0890)	$76.83
Total for Fund: General Fund (0001)	$1,161,079.69
Total for Fund: Health Care Deposit Fund (0912)	$4,413.09
Total for Fund: Item 0860−001−0001(b), Budget Act of 1998	$58,600.00
Total for Fund: Item 0890−001−0001(b), Budget Act of 1998	$18,678.74
Total for Fund: Item 1760−001−0001, Budget Act of 1998	$824.00
Total for Fund: Item 1760−001−0666(a), Budget Act of 1998	$1,668.00
Total for Fund: Item 1900−001−0950, Budget Act of 1998	$1,877.00
Total for Fund: Item 1920−001−0835(a), Budget Act of 1998	$172.44
Total for Fund: Item 2240−001−0001(a), Budget Act of 1998	$7.00
Total for Fund: Item 2660−001−0042(b), Budget Act of 1998	$17,670.69
Total for Fund: Item 2720−001−0044(a), Budget Act of 1998	$24,858.13
Total for Fund: Item 2740−001−0001, Budget Act of 1998	$2,129.58

Total for Fund: Item 2740−001−0044(a), Budget Act of 1998	$1,505.65
Total for Fund: Item 3340−001−0001(a), Budget Act of 1998	$4,290.65
Total for Fund: Item 3540−001−0001(a), Budget Act of 1998	$1,174.44
Total for Fund: Item 3600−001−0200(a), Budget Act of 1998	$219.04
Total for Fund: Item 3600−001−0200(e), Budget Act of 1998	$1,250.00
Total for Fund: Item 3790−001−0001, Budget Act of 1998	$98,848.53
Total for Fund: Item 3790−001−0392(a), Budget Act of 1998	$1,179.31
Total for Fund: Item 3860−001−0001(a), Budget Act of 1998	$959.00
Total for Fund: Item 3860−001−0001(d), Budget Act of 1998	$1,381.04
Total for Fund: Item 3940−001−0001(a), Budget Act of 1998	$2,704.37
Total for Fund: Item 4140−001−0001(a), Budget Act of 1998	$1,063.00
Total for Fund: Item 4200−001−0001(a), Budget Act of 1998	$11,090.00
Total for Fund: Item 4200−101−0001(a), Budget Act of 1998	$4,175.00
Total for Fund: Item 4260−001−0001(1), Budget Act of 1998	$78,674.21
Total for Fund: Item 4260−001−0001(2), Budget Act of 1998	$19,062.91
Total for Fund: Item 4300−001−0001(a), Budget Act of 1998	$500.00
Total for Fund: Item 4300−003−0001(a), Budget Act of 1998	$7,818.00
Total for Fund: Item 4440−001−0001(a), Budget Act of 1998	$3,952.05
Total for Fund: Item 4440−011−0001(b), Budget Act of 1998	$1,495.00
Total for Fund: Item 4700−101−0890(a), Budget Act of 1998	$1,099.58

Total for Fund: Item 5100−001−0870(a), Budget Act of 1998	$4,910.91
Total for Fund: Item 5100−001−0870(b), Budget Act of 1998	$210.00
Total for Fund: Item 5160−001−0001(a), Budget Act of 1998	$47,592.53
Total for Fund: Item 5180−001−0001(a), Budget Act of 1998	$1,153.24
Total for Fund: Item 5180−001−0001(c), Budget Act of 1998	$3,460.66
Total for Fund: Item 5240−001−0001(a), Budget Act of 1998	$213,100.86
Total for Fund: Item 5460−001−0001(a), Budget Act of 1998	$234.40
Total for Fund: Item 6110−001−0001(a), Budget Act of 1998	$500.00
Total for Fund: Item 6420−001−0001(a), Budget Act of 1998	$241.82
Total for Fund: Item 6610−001−0001(a), Budget Act of 1998	$2,965.60
Total for Fund: Item 6870−001−0001, Budget Act of 1998	$95,000.00
Total for Fund: Item 8100−001−0001(c), Budget Act of 1998	$873.67
Total for Fund: Item 8350−001−0001(1), Budget Act of 1998	$1,669.62
Total for Fund: Item 8350−001−0001(10), Budget Act of 1998	$3,809.28
Total for Fund: Item 8350−001−0001(3), Budget Act of 1998	$11,858.76
Total for Fund: Item 8350−001−0001(6), Budget Act of 1998	$548.00
Total for Fund: Item 8450−001−0001(b), Budget Act of 1998	$48.48
Total for Fund: Item 8510−001−0264(a), Budget Act of 1998	$18,697.50
Total for Fund: Item 8550−001−0191(a), Budget Act of 1998	$500.00
Total for Fund: Item 8660−001−0462(a), Budget Act of 1998	$375.00

Total for Fund: Item 8700−001−0001(a), Budget Act of 1998	$508.28
Total for Fund: Item 8700−001−0001(c), Budget Act of 1998	$374.00
Total for Fund: Item 8955−001−0001(b), Budget Act of 1998	$685.00
Total for Fund: Item 8960−011−0001(a), Budget Act of 1998	$280.00
Total for Fund: Motor Vehicle Account, State Transportation Fund (0044)	$1,268.00
Total for Fund: Motor Vehicle License Fee Account, Transportation Tax Fund (0064)	$773.00
Total for Fund: Petroleum Violation Escrow Account (0853)	$58.64
Total for Fund: Restitution Fund (0214)	$7,532.68
Total for Fund: Retail Sales Tax Fund (0094)	$1,834.93
Total for Fund: State Highway Account, State Transportation Fund (0042)	$4,919.40
Total for Fund: State Lottery Fund (0562)	$2,014.76
Total for Fund: Tax Relief and Refund Account (0027)	$136,343.02
Total for Fund: Unclaimed Property Fund (0970)	$358.51
Total for Fund: Unemployment Compensation Disability Fund (0588)	$15,564.59
Total for Fund: Welfare Advance Fund (0696)	$638.94

SEC. 2. Notwithstanding any other provision of law, Schedules (b) and (c) of Item 0860-001-0001 of Section 2.00 of the Budget Act of 1998 shall each be increased by fifty-eight thousand six hundred dollars ($58,600) to reflect the payment of claims from Schedule (b) of that item by Section 1 of this act.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to pay claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 956

An act relating to the payment of judgments and settlement claims against the State of California, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. The sum of three million six hundred eighty thousand nine hundred twenty-nine dollars and sixteen cents ($3,680,929.16) is hereby appropriated from the General Fund to the Attorney General for allocation to pay the following judgments pursuant to the following schedule:

(a) Seven hundred twelve thousand seven hundred eighty dollars and fifty cents ($712,780.50) to pay attorney fees, including interest, awarded in the case of American Academy of Pediatrics v. Daniel E. Lungren (Superior Court; City and County of San Francisco, Case No. 884574).

(b) Two hundred two thousand one hundred forty-eight dollars and sixty-six cents ($202,148.66) to pay a stipulation and judgment, including interest, in the case of China Airlines, et.al., v. California Department of Food and Agriculture (Superior Court; Los Angeles County, Case No. BC161625).

(c) Two million seven hundred sixty-six thousand dollars ($2,766,000) to pay all claims related to the construction project pertaining to the California Science Center Facility Phase I pursuant to the settlement agreement between the Keller Construction Co., Ltd. and the Department of General Services, including interest.

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 pay judgments and settlement claims against the state and end hardship to claimants as quickly as possible, it is necessary for this act to take effect immediately.

CHAPTER 957

An act to amend Section 17017.9 of the Education Code, relating to school facilities.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 17017.9 of the Education Code is amended to read:

17017.9. (a) Notwithstanding any other provision of law, a project shall be accorded, subject to subdivision (b), the priority status that otherwise is accorded under Section 17017.7 to a project for which state funding is requested for only 50 percent of the cost, if all of the following conditions are met:

(1) The applicant district documents to the satisfaction of the board that it has incurred bonded indebtedness in an amount not less than 95 percent of the bonding capacity of the district. "Bonded indebtedness" for the purposes of this section includes, but is not limited to, funding provided pursuant to Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5 of the Government Code.

(2) The applicant district agrees that up to 95 percent of the unexpended bonding capacity of the district, existing on or after the date of the district's first application for project funding pursuant to this section, shall apply toward the cost of projects.

(3) Either of the following apply:

(A) The applicant district agrees that developer fees imposed pursuant to Section 17620 shall apply toward the cost of projects for which the district requests state funding pursuant to this chapter, not to exceed 50 percent of the cost of any project. Fees needed for interim housing for capital outlay purposes for modernization and new construction projects, school district administration capital outlay projects, and capital outlay projects for transportation needs, are exempt from this requirement.

(B) The applicant is a school district with an average daily attendance of 2,500 or less.

(b) An applicant district qualifying for the priority status described in subdivision (a) as to any project shall continue to be accorded that status for all subsequent projects under this chapter until the time that the bonding capacity of the district determined for purposes of that subdivision increases by 20 percent.

(c) The condition set forth in paragraph (2) of subdivision (a) shall apply until either the applicant district's eligibility under this section terminates pursuant to subdivision (b), or funding for the district is approved and apportioned under this chapter for a project for which 50 percent or more of the cost is provided by the district from funding sources other than any state program administered by the board, whichever occurs first.

(d) Notwithstanding any other provision of law, as to any project for which priority status is accorded pursuant to subdivision (a), the estimate of average daily attendance for the applicant district may be calculated, upon request of the district, in the manner set forth in subdivision (a) of Section 17040.3.

(e) The board may recalculate program allowances and apportionments pursuant to this section.

CHAPTER 958

An act to add Section 104.21 to the Streets and Highways Code, relating to highways.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 104.21 is added to the Streets and Highways Code, to read:

104.21. (a) (1) The department may lease airspace under the interchange of Route 4 and Sutter Street in San Joaquin County to any city, county, or other political subdivision, or any state agency, for feeding program purposes. The department may provide information to those entities regarding the lease of that airspace for that use. Property may be leased under this section only if there is no buyer for the property. The lease shall be for one dollar ($1) per month. The lease amount may be paid in advance of the term covered in order to reduce the administrative costs associated with the payment of the monthly rental fee.

(2) Any lease executed under this section shall also provide for the cost of administering the lease. The administrative fee shall not exceed five hundred dollars ($500) per year unless the department determines that a higher administrative fee is necessary.

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

(c) Upon the request of the City of Stockton, the department may renew the lease for the period requested by the city, but not to exceed 10 years, and may, subsequent to that renewal, agree to not more than two additional renewals of not more than 10 years each.

(d) This section shall become operative on July 1, 1999.

CHAPTER 959

An act to add Section 290.95 to the Penal Code, relating to sex offenders.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 290.95 is added to the Penal Code, to read:

290.95. Every person required to register under Section 290, who applies or accepts a position as an employee or volunteer with any person, group, or organization where the registrant would be working directly and in an unaccompanied setting with minor children on more than an incidental and occasional basis or have supervision or disciplinary power over minor children, shall disclose his or her status as a registrant, upon application or acceptance of a position, to that person, group, or organization. A violation of this section is a misdemeanor punishable by imprisonment in a county jail for not exceeding six months, by a fine not exceeding one thousand dollars ($1,000), or by both that imprisonment and fine, and a violation of this section shall not constitute a continuing offense.

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 960

An act to amend Sections 17, 290.6, 1243, and 1467 of, and to add Sections 290.8 and 290.85 to, the Penal Code, relating to sex offender registration.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 17 of the Penal Code is amended to read:

17. (a) A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the

county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison.

(2) When the court, upon committing the defendant to the Youth Authority, designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his or her arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination or prior to filing an order pursuant to Section 872, the magistrate determines that the offense is a misdemeanor, in which event the case shall proceed as if the defendant had been arraigned on a misdemeanor complaint.

(c) When a defendant is committed to the Youth Authority for a crime punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, the offense shall, upon the discharge of the defendant from the Youth Authority, thereafter be deemed a misdemeanor for all purposes.

(d) A violation of any code section listed in Section 19.8 is an infraction subject to the procedures described in Sections 19.6 and 19.7 when:

(1) The prosecutor files a complaint charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being informed of his or her rights, elects to have the case proceed as a misdemeanor, or;

(2) The court, with the consent of the defendant, determines that the offense is an infraction in which event the case shall proceed as if the defendant had been arraigned on an infraction complaint.

(e) Nothing in this section authorizes a judge to relieve a defendant of the duty to register as a sex offender pursuant to Section 290 if the defendant is charged with an offense for which registration as a sex offender is required pursuant to Section 290, and for which the trier of fact has found the defendant guilty.

SEC. 2. Section 290.6 of the Penal Code is amended to read:

290.6. (a) Fifteen days before the scheduled release date of a person described in subdivision (b), the Department of Corrections shall provide to local law enforcement all of the following information regarding the person:

(1) Name.

(2) Community residence and address, including ZIP Code.

(3) Physical description.

(4) Conviction information.

(b) This subdivision shall apply to any person sentenced to the state prison who is required to register pursuant to Section 290 for a conviction of an offense specified in paragraph (1) of subdivision (a) of Section 290.4.

(c) For the purpose of this section, "law enforcement" includes any agency with which the person will be required to register upon his or her release pursuant to Section 290 based upon the person's community of residence upon release.

(d) If it is not possible for the Department of Corrections to provide the information specified in subdivision (a) on a date that is 15 days before the scheduled release date, the information shall be provided on the next business day following that date.

(e) The Department of Corrections shall notify local law enforcement within 36 hours of learning of the change if the scheduled release date or any of the required information changes prior to the scheduled release date.

SEC. 3. Section 1243 of the Penal Code is amended to read:

1243. An appeal to the Supreme Court or to a court of appeal from a judgment of conviction stays the execution of the judgment in all cases where a sentence of death has been imposed, but does not stay the execution of the judgment or order granting probation in any other case unless the trial or appellate court shall so order. The granting or refusal of such an order shall rest in the discretion of the court, except that a court shall not stay any duty to register as a sex offender pursuant to Section 290. If the order is made, the clerk of the court shall issue a certificate stating that the order has been made.

SEC. 4. Section 290.8 is added to the Penal Code, to read:

290.8. Effective January 1, 1999, any local law enforcement agency that does not register sex offenders during regular daytime business hours on a daily basis, excluding weekends and holidays, shall notify the regional parole office for the Department of Corrections and the regional parole office for the Department of the Youth Authority of the days, times, and locations the agency is available for registration of sex offenders pursuant to Section 290.

SEC. 5. Section 290.85 is added to the Penal Code, to read:

290.85. Every parolee who is required to register as a sex offender, pursuant to Section 290, shall provide proof of registration to his or her parole agent within six working days of release on parole. The six-day period for providing proof of registration may be extended only upon determination by the parole agent that unusual circumstances exist relating to the availability of local law enforcement registration capabilities that preclude the parolee's ability to meet the deadline. Every parolee who is required to register as a sex offender pursuant to Section 290 shall provide proof of any revision or annual update to his or her registration information to his

or her parole agent at his or her next scheduled supervision appointment.

SEC. 6. Section 1467 of the Penal Code is amended to read:

1467. An appeal from a judgment of conviction does not stay the execution of the judgment in any case unless the trial or a reviewing court shall so order. The granting or refusal of such an order shall rest in the discretion of the court, except that a court shall not stay any duty to register as a sex offender pursuant to Section 290.

SEC. 7. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

CHAPTER 961

An act to add Section 4536.5 to the Penal Code, and to amend Sections 6600.05, 6601, 6602, 6602.5, 6603, 6609.1, 6609.2, and 6609.3 of, and to amend, repeal, and add Section 6604.1 of, the Welfare and Institutions Code, relating to sex offenses, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 4536.5 is added to the Penal Code, to read:

4536.5. The medical director or person in charge of a state hospital or other public or private mental health facility to which a person has been committed under the provisions of Article 4 (commencing with Section 6600) of Chapter 2 of Part 2 of the Welfare and Institutions Code, shall promptly notify the Department of Corrections Sexually Violent Predator Parole Coordinator, the chief of police of the city in which the hospital or facility is located, or the sheriff of the county if the hospital or facility is located in an unincorporated area, of the escape of the person, and shall request the assistance of the chief of police or sheriff in apprehending the person, and shall, within 48 hours of the escape of the person, orally

notify the court that made the commitment, the prosecutor in the case, and the Department of Justice of the escape.

SEC. 2. Section 6600.05 of the Welfare and Institutions Code is amended to read:

6600.05. (a) Until a permanent housing and treatment facility is available, Atascadero State Hospital shall be used whenever a person is committed to a secure facility for mental health treatment pursuant to this article and is placed in a state hospital under the direction of the State Department of Mental Health unless there are unique circumstances that would preclude the placement of a person at that facility. If a state hospital is not used, the facility to be used shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health. In no case shall a person committed to a secure facility for mental health treatment pursuant to this article be placed at Metropolitan State Hospital or Napa State Hospital.

(b) A permanent facility for the housing and treatment of persons committed pursuant to this article shall be located on a site or sites determined by the Director of Corrections and the Director of Mental Health, with approval by the Legislature through a trailer bill or other legislation. The State Department of Mental Health shall be responsible for operation of the facility, including the provision of treatment. In no event shall any persons other than those placed pursuant to this article be housed or treated at a facility established pursuant to this subdivision unless expressly authorized by the Legislature.

SEC. 3. Section 6601 of the Welfare and Institutions Code is amended to read:

6601. (a) Whenever the Director of Corrections determines that an individual who is in custody under the jurisdiction of the Department of Corrections, and who is either serving a determinate prison sentence or whose parole has been revoked, may be a sexually violent predator, the director shall, at least six months prior to that individual's scheduled date for release from prison, refer the person for evaluation in accordance with this section. However, if the inmate was received by the department with less than nine months of his or her sentence to serve, or if the inmate's release date is modified by judicial or administrative action, the director may refer the person for evaluation in accordance with this section at a date that is less than six months prior to the inmate's scheduled release date.

(b) The person shall be screened by the Department of Corrections and the Board of Prison Terms based on whether the person has committed a sexually violent predatory offense and on a review of the person's social, criminal, and institutional history. This screening shall be conducted in accordance with a structured screening instrument developed and updated by the State Department of Mental Health in consultation with the Department of Corrections. If as a result of this screening it is determined that the

person is likely to be a sexually violent predator, the Department of Corrections shall refer the person to the State Department of Mental Health for a full evaluation of whether the person meets the criteria in Section 6600.

(c) The State Department of Mental Health shall evaluate the person in accordance with a standardized assessment protocol, developed and updated by the State Department of Mental Health, to determine whether the person is a sexually violent predator as defined in this article. The standardized assessment protocol shall require assessment of diagnosable mental disorders, as well as various factors known to be associated with the risk of reoffense among sex offenders. Risk factors to be considered shall include criminal and psychosexual history, type, degree, and duration of sexual deviance, and severity of mental disorder.

(d) Pursuant to subdivision (c), the person shall be evaluated by two practicing psychiatrists or psychologists, or one practicing psychiatrist and one practicing psychologist, designated by the Director of Mental Health. If both evaluators concur that the person has a diagnosed mental disorder so that he or she is likely to engage in acts of sexual violence without appropriate treatment and custody, the Director of Mental Health shall forward a request for a petition for commitment under Section 6602 to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment.

(e) If one of the professionals performing the evaluation pursuant to subdivision (d) does not concur that the person meets the criteria specified in subdivision (d), but the other professional concludes that the person meets those criteria, the Director of Mental Health shall arrange for further examination of the person by two independent professionals selected in accordance with subdivision (g).

(f) If an examination by independent professionals pursuant to subdivision (e) is conducted, a petition to request commitment under this article shall only be filed if both independent professionals who evaluate the person pursuant to subdivision (e) concur that the person meets the criteria for commitment specified in subdivision (d). The professionals selected to evaluate the person pursuant to subdivision (g) shall inform the person that the purpose of their examination is not treatment but to determine if the person meets certain criteria to be involuntarily committed pursuant to this article. It is not required that the person appreciate or understand that information.

(g) Any independent professional who is designated by the Director of Corrections or the Director of Mental Health for purposes of this section shall not be a state government employee, shall have at least five years of experience in the diagnosis and treatment of mental disorders, and shall include psychiatrists and licensed

psychologists who have a doctoral degree in psychology. The requirements set forth in this section also shall apply to any professionals appointed by the court to evaluate the person for purposes of any other proceedings under this article.

(h) If the State Department of Mental Health determines that the person is a sexually violent predator as defined in this article, the Director of Mental Health shall forward a request for a petition to be filed for commitment under this article to the county designated in subdivision (i). Copies of the evaluation reports and any other supporting documents shall be made available to the attorney designated by the county pursuant to subdivision (i) who may file a petition for commitment in the superior court.

(i) If the county's designated counsel concurs with the recommendation, a petition for commitment shall be filed in the superior court of the county in which the person was convicted of the offense for which he or she was committed to the jurisdiction of the Department of Corrections. The petition shall be filed, and the proceedings shall be handled, by either the district attorney or the county counsel of that county. The county board of supervisors shall designate either the district attorney or the county counsel to assume responsibility for proceedings under this article.

(j) The time limits set forth in this section shall not apply during the first year that this article is operative.

(k) If the person is otherwise subject to parole, a finding or placement made pursuant to this article shall not toll, discharge, or otherwise affect the term of parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

(*l*) Pursuant to subdivision (d), the attorney designated by the county pursuant to subdivision (i) shall notify the State Department of Mental Health of its decision regarding the filing of a petition for commitment within 15 days of making that decision.

SEC. 4. Section 6602 of the Welfare and Institutions Code is amended to read:

6602. (a) 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 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.

(b) The court shall notify the State Department of Mental Health of the outcome of the probable cause hearing by forwarding to the department a copy of the minute order of the court within 15 days of the decision.

SEC. 5. Section 6602.5 of the Welfare and Institutions Code, as added by Section 4 of Chapter 19 of the Statutes of 1998, is amended to read:

6602.5. (a) 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.

(b) 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.

(c) In no event shall the number of persons referred pursuant to subdivision (b) to the superior court of any county exceed 10 in any 30-day period, except upon agreement of the presiding judge of the superior court, the district attorney, the public defender, the sheriff, and the Director of Mental Health.

(d) This section shall be implemented in Los Angeles County pursuant to a letter of agreement between the Department of Mental Health, the Los Angeles County district attorney, the Los Angeles County public defender, the Los Angeles County sheriff, and the Los Angeles County superior court. The number of persons referred to the superior court of Los Angeles County pursuant to subdivision (b) shall be governed by the letter of agreement.

SEC. 6. Section 6603 of the Welfare and Institutions Code is amended to read:

6603. (a) A person subject to this article shall be entitled to a trial by jury, the assistance of counsel, the right to retain experts or professional persons to perform an examination on his or her behalf, and have access to all relevant medical and psychological records and reports. In the case of a person who is indigent, the court shall appoint counsel to assist him or her, and, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(b) The attorney petitioning for commitment under this article shall have the right to demand that the trial be before a jury.

(c) If no demand is made by the person subject to this article or the petitioning attorney, the trial shall be before the court without jury.

(d) A unanimous verdict shall be required in any jury trial.

(e) The court shall notify the State Department of Mental Health of the outcome of the trial by forwarding to the department a copy of the minute order of the court within 72 hours of the decision.

SEC. 7. Section 6604.1 of the Welfare and Institutions Code, as added by Section 5 of Chapter 19 of the Statutes of 1998, is amended 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 become inoperative on July 1, 2001, and, as of January 1, 2002, is repealed, unless a later enacted statute that is enacted before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. 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. For subsequent extended commitments, the term of commitment shall be from the date of the termination of the previous commitment.

(b) This section shall become operative on July 1, 2001.

SEC. 9. Section 6609.1 of the Welfare and Institutions Code is amended to read:

6609.1. (a) When the State Department of Mental Health makes 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, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

(1) The community in which the person may be released for community outpatient treatment.

(2) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(3) The county which filed for the person's civil commitment pursuant to this article.

The department shall also notify the Department of Corrections' Sexually Violent Predator Parole Coordinator, if the person is

otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code.

The notice shall be given at least 15 days prior to the department's submission of its recommendation to the court.

(b) When the State Department of Mental Health makes a recommendation to pursue recommitment, a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(1) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(2) The probable community in which the person will be released, if recommending not to pursue recommitment.

(3) The county which filed for the person's civil commitment pursuant to this article.

The State Department of Mental Health shall also notify the Department of Corrections' Sexually Violent Predator Parole Coordinator, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of the Penal Code. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

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 release of a sexually violent predator, the court shall notify the Department of Corrections Sexually Violent Predator Parole Coordinator. The Department of Corrections shall notify the State Department of Mental Health, the sheriff or chief of police, or both, and the district attorney, that have jurisdiction over the following locations:

(1) The community in which the person is to be released.

(2) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

The Department of Corrections shall make the above notifications regardless of whether the person released will be serving a term of parole after release by the court.

(d) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the

Department of Corrections' Sexually Violent Predator Parole Coordinator, whichever is sooner. To facilitate timely parole arrangements, notification to the Department of Corrections' Sexually Violent Predator Parole Coordinator of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible release shall be made in advance of the proceeding or decision determining whether to release the person.

(e) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(f) 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.

(g) The provisions of this section are severable. If any provision of this section 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. 10. 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 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. 11. Section 6609.3 of the Welfare and Institutions Code is amended to read:

6609.3. (a) At the time a notice is sent pursuant to subdivisions (a) and (b) of Section 6609.1, the sheriff, chief of police, or district attorney notified of the release 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 release, recommendation regarding recommitment, or review of commitment status pursuant to subdivision (f) of Section 6605. 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 100 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 date or the community in which the person is to reside, the sheriff, chief of police, or the district attorney shall provide the witness, victim, or next of kin with the revised information.

(b) At the time a notice is sent pursuant to subdivision (c) of Section 6609.1 the Department of Corrections 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 has been released.

(c) 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. 12. No reimbursement is required by Section 1 of 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. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to 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 962

An act to amend Section 17155 of the Revenue and Taxation Code, and to add Section 11008.19 to the Welfare and Institutions Code, relating to holocaust victims, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 17155 of the Revenue and Taxation Code is amended to read:

17155. Gross income shall not include either of the following:

(a) (1) Any amount, including any interest or property, that is received as compensation in any taxable year by a taxpayer pursuant to the German Act Regulating Unresolved Property Claims, as amended (Gesetz zur Regelung offener Vermogensfragen).

(2) For purposes of this subdivision, the basis of any property received pursuant to the German Act Regulating Unresolved Property Claims shall be the fair market value of the property at the time of receipt by the taxpayer.

(b) (1) Any amount received by a taxpayer who is a Holocaust victim or the heir or beneficiary of a Holocaust victim as a result of a settlement of claims against any entity or individual for any recovered asset.

(2) For purposes of this subdivision:

(A) "Holocaust victim" means a person who was persecuted by Nazi Germany or any Axis regime during any period from 1933 to 1945, inclusive.

(B) "Recovered asset" means any asset of any type, including any bank deposits, insurance proceeds, or artwork owned by a Holocaust victim during any period from 1920 to 1945, inclusive, withheld from that Holocaust victim or his or her heirs or beneficiaries from and after 1945, and not recovered, returned, or otherwise compensated to a Holocaust victim or his or her heirs or beneficiaries until 1995, or thereafter. "Recovered asset" shall also include any interest earned on any of these assets.

SEC. 2. Section 11008.19 is added to the Welfare and Institutions Code, to read:

11008.19. (a) Notwithstanding any other provision of law, any amount, including any interest or property, received by a holocaust victim, as defined in subparagraph (A) of paragraph (2) of subdivision (b) of Section 17155 of the Revenue and Taxation Code either as compensation pursuant to the German Act Regulating Unresolved Property Claims, as amended (Gesetz zur Regelung offener Vermogensfragen), or as a result of a settlement of claims against any entity or individual for any recovered asset, shall not be

considered as income or resources for purposes of determining eligibility to receive Medi-Cal benefits or public assistance benefits or the amounts of those benefits.

(b) This section shall not be construed to permit any retroactive services or payments to be provided to recipients of Medi-Cal or public assistance benefits.

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 963

An act to amend Section 1523 of the Code of Civil Procedure, and to amend Section 12936 of, and to add Sections 790.15 and 12967 to, the Insurance Code, relating to insurance practices, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 1523 of the Code of Civil Procedure is amended to read:

1523. If an insurer, after a good faith effort to locate and deliver to a policyholder a Proposition 103 rebate ordered or negotiated pursuant to Section 1861.01 of the Insurance Code, determines that a policyholder cannot be located, all funds attributable to that rebate escheat to the state and shall be delivered to the Controller. The funds subject to escheat on or after July 1, 1997, shall be transferred by the Controller to the Department of Insurance for deposit in the Insurance Fund in the following amounts and for the following purposes:

(a) Up to the amount that will repay principal and interest on the General Fund loan authorized by Item 0845-001-0001 of the Budget Act of 1996 for expenditure as provided in Section 12936 of the Insurance Code.

(b) The sum of four million dollars ($4,000,000) for expenditure during the 1998-1999 fiscal year as provided in Section 12967 of the Insurance Code.

SEC. 2. Section 790.15 is added to the Insurance Code, to read:

790.15. (a) If an insurer or any affiliate of an insurer has failed to pay any valid claim from Holocaust survivors, the certificate of authority of the insurer shall be suspended until the insurer, or its affiliates, pays the claim or claims.

(b) As used in this section:

(1) "Holocaust survivor" means any person who is the beneficiary of an insurance policy, if the insurance policy insured a person's life, property, or other interest, and the insured person was killed, died, was displaced, or was otherwise a victim of persecution of Jewish and other peoples preceding and during World War II by Germany, its allies, or sympathizers.

(2) "Beneficiary" means any person or entity entitled to recover under any policy of insurance, including any named beneficiary, any heir of a named beneficiary, and any other person entitled to recover under the policy.

(3) "Claim" means any claim submitted by a Holocaust survivor or other beneficiary arising under an insurance policy for any loss or damage caused by or arising because of discriminatory practices or persecution by the Nazi-controlled German government or its allies, or by insurers that refused to pay claims because of a claim that policies of insurance or records were missing or confiscated because of actions by the Nazi-controlled German government or its agents or allies. Claim also includes any claim by Holocaust survivors or beneficiaries to collect proceeds from dowry or education policies or from annuities.

(4) An "affiliate" of, or person "affiliated" with, a specific person, means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(5) "Control" includes the terms "controlling," "controlled by," and "under common control with," and means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, more than 10 percent of the voting securities of any other person.

(c) An action to suspend a certificate of authority under this section shall be conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code), except that (1)

if the Office of Administrative Hearings is unable to assign an administrative law judge to preside over a hearing that commences within 30 days of the filing of an accusation or order initiating an action under this section, the administrative law judge may be appointed by the commissioner; and (2) if the commissioner determines that it is necessary to protect the interests of Holocaust survivors, he or she may issue an order of suspension pursuant to this section prior to holding a hearing.

(d) If the commissioner issues an order pursuant to paragraph (2) of subdivision (c), he or she shall immediately issue and serve upon the insurer a statement of reasons for the immediate action, as well as a copy of the accusation or order containing the allegations that support the order. Any order issued pursuant to this subdivision shall include a notice stating the time and place of a hearing on the order, which shall not be less than 20, nor more than 30 days after the order is served.

(e) When considering an action to suspend a certificate of authority under this section, the commissioner shall include consideration of whether the insurer has participated in good faith in an international commission on Holocaust survivor insurance claims, and whether the commission is making meaningful and expeditious progress toward paying claims to survivors and righting the historic wrong done to Holocaust victims.

SEC. 3. Section 12936 of the Insurance Code is amended to read:

12936. (a) (1) Escheated funds deposited in the Insurance Fund pursuant to subdivision (a) of Section 1523 of the Code of Civil Procedure shall be transferred to the General Fund on June 30, 1998, to repay the principal and interest on the General Fund loan provided pursuant to Item 0845-001-0001 of the Budget Act of 1996, and such funds are hereby continuously appropriated for that purpose.

(2) If the Director of Finance determines that funds subject to escheat for the 1997–98 fiscal year are insufficient to repay the General Fund loan plus the interest owed, funds subject to escheat in the 1998–99 fiscal year, up to the amount necessary to repay the General Fund loan plus the interest owed, shall be available for expenditure by the commissioner to repay the principal and interest on the General Fund loan. Notwithstanding the loan repayment date specified in Item 0845-001-0001 of the Budget Act of 1996, such a determination by the Director of Finance shall trigger an extension of the loan repayment date to June 30, 1999.

(b) A policyholder who was entitled to a rebate pursuant to settlement or order of the commissioner and who has not received the escheated rebate may submit a claim to the Controller. The Controller shall pay the claim from among the Proposition 103 refunds that have escheated to the state and been deposited in the Unclaimed Property Fund upon verification that the claim is valid.

SEC. 4. Section 12967 is added to the Insurance Code, to read:

12967. (a) (1) (A) The department shall develop and implement a coordinated approach to gather, review, and analyze the archives of insurers and other archives and records, using onsite teams and an oversight committee, to provide for research and investigation into insurance policies, unpaid insurance claims, and related matters of victims of the Holocaust or of the Nazi-controlled German government or its allies, and the beneficiaries and heirs of those victims, and for losses arising from the activities of the Nazi-controlled German government or its allies for insurance policies issued before and during World War II by insurers who have affiliates or subsidiaries authorized to do business in California. Information compiled shall be placed in a centralized data base for the retention of policy and claimant data, and the data shall be used to implement this section and Section 790.15.

(B) The oversight committee referred to in paragraph (1) shall be composed of qualified individuals with experience in Holocaust claims cases, similar investigations, archival research, and international law. The oversight committee shall also include Holocaust survivors. No member of the oversight committee shall have a potential or actual conflict of interest, or shall be employed by a person who has a potential or actual conflict of interest.

(2) The department has an affirmative duty to play an independent role in representing the interests of Holocaust survivors where necessary, including the duty to carry out research, investigations, and advocacy. The department shall cooperate with, participate in, promote coordination with, and to the extent feasible and consistent with the purposes of this section, work jointly with the National Association of Insurance Commissioners and the international commission on Holocaust survivor claims or any other entity involved in the documentation, resolution, settlement, or distribution of insurance claims, including documentation of unpaid claims and distribution of proceeds, and establishment and maintenance of a data base to contain information relevant to claimants and documents and historical information. The department shall work to recover information and records that will strengthen the claims of California residents.

(3) The department shall employ insurance archaeologists, economists, attorneys, accountants, and other specialists, in this country and in Europe, to implement this section. The department shall work jointly with the National Association of Insurance Commissioners and other organizations for this purpose. The department's cooperation with other states shall be for the purpose of advancing survivors' claims while avoiding duplication of efforts, and shall be dependent upon contributions by other states.

(4) In order to assure that Holocaust survivors receive the most aggressive and independent representation possible in pursuit of their historic claims, in contracting with accounting firms, law firms, economists, or others to implement this section, the department

shall, to the maximum extent possible, avoid any potential or actual conflict of interest by doing the following:

(A) Seek and give preference to firms that are entirely free of any associations with firms representing insurers and nations from which Holocaust survivors are seeking just treatment of their claims.

(B) If the department finds that is necessary to contract with a firm or firms that have conflicts or potential conflicts of interest, those conflicts or potential conflicts of interest shall be disclosed to the commissioner, and the following requirements shall apply:

(i) The contract shall contain a provision that expresses a formal commitment on the part of the firm to aggressively pursue a maximum just settlement for Holocaust survivors and their families without regard to any adverse impacts on insurers, affiliates of insurers, nations, or others that may have employed the firm or affiliates of the firm that is contracting with the commissioner to assist in carrying out the commissioner's responsibilities under this section.

(ii) If any conflict or potential conflict exists between the firm, or an affiliate of the firm, and an insurer, an affiliate of an insurer, a nation or others directly or indirectly involving Holocaust claims, the firm shall disclose both the fact of the conflict or potential conflict, and all relevant information describing the nature of the conflict or potential conflict.

(iii) If a conflict or potential conflict exists between the firm, or an affiliate of the firm, and an insurer, an affiliate of an insurer, a nation, or others that does not directly or indirectly involve Holocaust claims, the firm shall disclose the fact of the conflict or potential conflict and identify the source of the conflict or potential conflict, but need not describe the particular circumstances or facts that create the conflict or potential conflict.

(C) The department may take whatever special measures it deems necessary to avoid either the appearance or the reality of conflicts that may undermine public confidence in the integrity of the effort to secure justice for Holocaust survivors.

(b) The funding of the activities provided for by this section for the 1998-1999 fiscal year shall be from funds transferred pursuant to subdivision (b) of Section 1523 of the Code of Civil Procedure, which funds are hereby appropriated to the commissioner for that purpose. The commissioner shall seek reimbursement of those funds as provided in subdivision (c).

Funding for subsequent fiscal years shall be subject to the Budget Act and based on a plan submitted by the commissioner to the Legislature outlining the plan for reimbursement of expenses of the department by affected insurers.

Funds made available to implement this section shall be used to develop and implement a coordinated approach to gather, review, and analyze the archives of affected insurance groups, and other archives and records, using onsite teams and an oversight committee consisting of individuals with expertise in accounting, law, insurance

archaeology, economics, and public information. The information compiled shall be placed in a centralized data base for the retention of policy and claimant data, and that data shall be used by the department to implement this section.

(c) (1) Any funds recovered by the department for the purpose of reimbursing the state for costs associated with investigation and enforcement actions under this section shall not be deposited in the Insurance Fund, but instead shall be delivered to the Controller for deposit into the General Fund.

(2) To the maximum extent possible, the department shall seek reimbursement for its costs incurred in implementing this section, including funds transferred pursuant to subdivision (b) of Section 1523 of the Code of Civil Procedure, from any settlements reached with affected insurers.

(d) The department shall report its progress in implementing this section and its participation in the identification and resolution of insurance claims of Holocaust survivors and their beneficiaries and heirs. The report shall also include an overview of current and anticipated expenditures in implementing this section. The department shall make this report biannually to the insurance and budget committees of the Legislature.

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:

Many of the victims of the Holocaust are elderly. In order to permit testimony by and compensation to these persons, it is necessary for this act to take effect immediately.

CHAPTER 964

An act to add Section 8670.32 to the Government Code, relating to oil spills.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 8670.32 is added to the Government Code, to read:

8670.32. (a) The following definitions govern the construction of this section:

(1) "Nontank vessel" means a vessel, other than a tank vessel, not designed to carry oil as cargo.

(2) "Reasonable worst case spill" means a spill of the total volume of the largest fuel tank on the nontank vessel.

(3) "Qualified individual" means a shore-based representative of a covered nontank vessel owner or operator that, at a minimum, shall be fluent in English, located in the continental United States, be available on a 24-hour basis, and have full written authority to implement the covered nontank vessel's contingency plan.

(b) A nontank vessel of 300 gross registered tons or greater shall not operate in the marine waters of the state unless the owner or operator has an oil spill contingency plan prepared, submitted, and approved in accordance with this section.

(c) On or before September 1, 1999, each owner or operator of a nontank vessel of 300 gross registered tons or greater shall prepare an oil spill contingency plan for that vessel, and submit the plan to the administrator for review and approval. The plan may be specific to an individual vessel or may be developed using either of the following:

(1) A fleet plan submitted by an owner or operator that has a number of vessels that transit the same or substantially the same routes in marine waters of the state. This fleet plan shall contain all prevention and response elements required pursuant to this section. A separate appendix for each vessel shall be included as an attachment to the plan, and shall include both of the following:

(A) Specification of the type and total amount of fuel carried.

(B) Specification of the capacity of the largest fuel tank.

(2) The owner or operator provides evidence of a contract with the Pacific Merchant Shipping Association, a nonprofit corporation, or other nonprofit maritime association, to provide a statewide spill response plan consistent with the requirements of this section, pursuant to its applicable fee structure.

(d) The geographic regions covered by an individual plan shall be defined in regulations adopted by the administrator.

(e) In addition to all other contingency plan requirements in this section, the plan shall contain, at a minimum, a procedure for management of the resources to be used in response to an oil spill.

(f) The vessel owner or operator shall submit any information, or address any plan element that is required by this section but not addressed by a statewide spill response plan.

(g) The administrator shall adopt regulations and guidelines to implement the requirements of this section. All regulations and guidelines shall be developed in consultation with the State Interagency Oil Spill Committee and the oil spill Technical Advisory Committee. The administrator shall hold a public hearing on the regulations. The regulations and guidelines shall provide for the best achievable protection of coastal and marine resources and shall include provisions for public review and comment on submitted contingency plans prior to approval. The regulations shall ensure that a contingency plan meets all of the following requirements:

(1) Be consistent with the protection and response strategies as well as other elements addressed in the state contingency plan and

the appropriate area contingency plan, and is not in conflict with the national contingency plan.

(2) Be a written document, reviewed for feasibility and approved by the owner or operator, or a person designated by the owner or operator.

(3) Establish a specific chain of command and specify the overall responsibilities of crew, supervisorial, contract, and volunteer personnel.

(4) Detail procedures for reporting oil spills to local, state, and federal agencies, and include a list of contacts to call in the event of a drill, threatened discharge, or discharge.

(5) Specify lines of communication between the vessel and the on-scene commanders, response teams, and local, state, and federal response organizations.

(6) Provide for response planning, including coordination with employees, outside contractors, volunteers, and local, state, and federal agencies.

(7) Identify a qualified individual.

(8) Provide the name, address, telephone number, and facsimile number of an agent for service of process, located in the state and designated to receive legal documents on behalf of the plan holder.

(9) Demonstrate that shipboard personnel have knowledge of the notification requirements and other provisions of the contingency plan.

(10) Provide for timely and effective oil spill response. This may be provided directly or through membership in, or contract with, a private or public cooperative or other organization and shall be consistent with the state contingency plan and the appropriate area contingency plan, and not in conflict with the national contingency plan.

(11) Provide evidence that the vessel is in compliance with the International Safety Management Code, established by the International Maritime Organization, as applicable.

(h) Each contingency plan shall be submitted and resubmitted to the administrator for review and approval as specified in Section 8670.31.

(i) A nontank vessel, required to have a contingency plan pursuant to this section, shall not enter marine waters of the state unless the vessel owner or operator has provided to the administrator evidence of financial responsibility that demonstrates, to the administrator's satisfaction, the ability to pay at least three hundred million dollars ($300,000,000) to cover damages caused by a spill, and the owner or operator of the vessel has obtained a certificate of financial responsibility from the administrator for the vessel. If the evidence provided to the administrator by the vessel owner or operator is a federal certificate of financial responsibility, or other evidence of financial responsibility that does not comply with state requirements, and the administrator incurs costs verifying that

evidence over the amount the administrator normally incurs when verifying evidence of financial responsibility, the administrator may charge the vessel owner or operator a reasonable fee for the additional costs incurred.

(j) A nonprofit maritime association that provides spill response services pursuant to a spill response plan approved by the administrator, and its officers, directors, members, and employees shall have limited liability as follows:

(1) Section 8670.56.6 applies to any nonprofit maritime association that provides spill response services pursuant to its statewide spill response plan.

(2) A nonprofit maritime association providing spill response plan services may require, through agreement of the parties, as a condition of providing these services, the owner or operator of the nontank vessel to defend, indemnify, and hold harmless the association and its officers, directors, members, and employees from all claims, suits, or actions of any nature by whomever asserted, even though resulting, or alleged to have resulted from, negligent acts or omissions of the association or of an officer, director, member, or employee of the association in providing spill response plan services under the contract.

(3) Membership in the association or serving as a director of the association shall not, in and of itself, be grounds for liability resulting from the activities of the association in the preparation or implementation of a contingency plan.

(4) This section shall not be deemed to include the association or its officers, directors, members, or employees as a responsible party, as defined in subdivision (q) of Section 8670.3 of this code and in subdivision (p) of Section 8750 of the Public Resources Code for the purposes of this chapter, Article 3.5 (commencing with Section 8574.1) of Chapter 7 of this code, and Division 7.8 (commencing with Section 8750) of the Public Resources Code.

(5) This section does not limit the liability of any responsible party, as defined in subdivision (q) of Section 8670.3. The responsible party is liable for all damages arising from a spill, as provided in subdivision (c) of Section 8670.56.6.

(k) Section 8670.56.6 applies to any person, including, but not limited to, an oil spill cooperative, its agents, subcontractors, or employees, that contract with the nonprofit maritime association to provide spill response services for the association spill response plan.

(*l*) (1) Except as provided in paragraph (2), any nontank vessel that is subject to subdivision (b) or (i), and that enters the waters of the state in violation of subdivision (b) or (i), is subject to an administrative civil penalty of up to one hundred thousand dollars ($100,000). The administrator shall assess the civil penalty against the owner or operator of the vessel pursuant to Section 8670.68. Each day the owner or operator of such a nontank vessel is in violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

(m) (1) Except as provided in paragraph (2), any owner or operator of a nontank vessel that is subject to subdivision (b) or (i) and who knowingly and intentionally enters the waters of the state in violation of subdivision (b) or (i), is guilty of a misdemeanor punishable by up to one year of imprisonment in the county jail, or by a fine of up to ten thousand dollars ($10,000), or by both imprisonment and a fine. Each day the owner or operator of such a nontank vessel is in knowing and intentional violation of subdivision (b) or (i) shall be considered a separate violation.

(2) Paragraph (1) does not apply in any of the following circumstances:

(A) A contingency plan has been submitted by the vessel owner or operator to the administrator as required by this section, and the office of the administrator is reviewing the plan and has not denied approval.

(B) The nontank vessel has entered state waters after the United States Coast Guard has determined that the vessel is in distress.

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 965

An act to amend Sections 22002, 22117, 22120, 22121, 22132, 22138.6, 22143, 22146, 22146.5, 22147, 22151, 22154, 22156, 22161, 22162, 22163, 22165, 22170, 22201, 22207, 22212, 22216, 22222, 22223, 22224, 22225, 22250, 22251, 22252, 22253, 22302, 22303.5, 22305, 22306, 22308, 22313, 22315, 22316, 22317, 22317.5, 22327, 22450, 22354, 22500, 22501, 22508, 22508.5, 22513, 22515, 22516, 22601.5, 22602, 22604, 22650, 22651, 22652,

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[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 22002 of the Education Code is amended to read:

22002. The Legislature recognizes that the assets of the State Teachers' Retirement Plan with respect to the Defined Benefit Program are insufficient to meet the obligations of that program already accrued or to accrue in the future with respect to service credited to members of that program prior to July 1, 1972. Therefore, the Legislature declares the following policies with respect to the financing of the Defined Benefit Program of the State Teachers' Retirement Plan:

(a) Members shall contribute a percentage of creditable compensation, unless otherwise specified in this part.

(b) Employers shall contribute a percentage of the total creditable compensation on which member contributions are based.

(c) The state shall contribute a sum certain for a given number of years for the purpose of payment of benefits under this part.

SEC. 2. Section 22117 of the Education Code is amended to read:

22117. "Contribution rate for additional service credit" means the contribution rate adopted by the board as a plan amendment with respect to the Defined Benefit Program for the purchase of service credit. This rate shall be based upon the most recent valuation of the plan with respect to the Defined Benefit Program and increased to include any subsequently required contribution rates designated for funding subsequent allowance increases.

SEC. 3. Section 22120 of the Education Code is amended to read:

22120. "Credited interest" means interest that is credited to active members' and inactive members', accumulated retirement contributions, and accumulated annuity deposit contributions at a rate set annually by the board as a plan amendment with respect to the Defined Benefit Program.

SEC. 4. Section 22121 of the Education Code is amended to read:

22121. "Credited service" means service for which the required contributions have been paid.

SEC. 5. Section 22132 of the Education Code is amended to read:

22132. "Employed" or "employment" means employment to perform creditable service subject to coverage by the State Teachers' Retirement Defined Benefit Program, except as otherwise specifically provided under this part.

SEC. 6. Section 22138.6 of the Education Code is amended to read:

22138.6. "Full-time equivalent" means the days or hours of creditable service that a person who is employed on a part-time basis would be required to perform in a school year if he or she were employed full time in that position.

SEC. 6.5. Section 22143 of the Education Code is amended to read:

22143. "Investment manager" and "investment adviser" mean any person, firm, or custodian referred to in Section 22359, either appointed by or under contract with the board to engage in investment transactions or to manage or advise in the management of the assets of the Teachers' Retirement Fund with respect to the Defined Benefit Program under this part and the Cash Balance Benefit Program under Part 14 (commencing with Section 26000).

SEC. 7. Section 22146 of the Education Code is amended to read:

22146. "Member" means any person, unless excluded under other provisions of this part, who has performed creditable service as defined in Section 22119.5 and has earned creditable compensation for that service and has not received a refund for that service and, as

a result, is subject to the Defined Benefit Program. A member's rights and obligations under this part with respect to the Defined Benefit Program shall be determined by the applicability of subdivision (a), (b), (c), or (d), and subject to any applicable exceptions under other provisions of this part.

(a) An active member is a member who is not retired or disabled and who earns creditable compensation during the school year.

(b) An inactive member is a member who is not retired or disabled and who, by the pay period ending June 30, has not earned creditable compensation during the school year.

(c) A disabled member is a member to whom a disability allowance is payable under Chapter 25 (commencing with Section 24001).

(d) A retired member is a member who has terminated employment and has retired for service under the provisions of Chapter 27 (commencing with Section 24201), or has retired for disability under the provisions of Chapter 26 (commencing with Section 24100) or retired for service or disability under the provisions of Chapter 21 (commencing with Section 23400), and to whom a retirement allowance is therefore payable.

SEC. 8. Section 22146.5 of the Education Code is amended to read:

22146.5. "Membership" means membership in the Defined Benefit Program, except as otherwise specifically provided in this part.

SEC. 9. Section 22147 of the Education Code is amended to read:

22147. (a) "Month" means 20 working days or four weeks of five working days each, including legal holidays, with respect to the computation and crediting of service.

(b) "Month," for all other purposes, means a period commencing on any day of a calendar month and extending through the day preceding the corresponding day of the succeeding calendar month, if there is any such corresponding day, and if not, through the last day of the succeeding calendar month.

SEC. 10. Section 22151 of the Education Code is amended to read:

22151. "Overtime" means the aggregate service performed as a member of the Defined Benefit Program in excess of the hours of work considered normal for employees on a full-time basis.

SEC. 11. Section 22154 of the Education Code is amended to read:

22154. "Pay period" means a payroll period of not less than four weeks or more than one calendar month.

SEC. 12. Section 22156 of the Education Code is amended to read:

22156. "Plan vesting" means the right of the member upon completion of the minimum number of required years of credited service provided in the Defined Benefit Program to entitle the member or his or her beneficiary to a monthly retirement allowance, disability allowance, survivor benefit allowance, family allowance, or death benefit at a future date, prior to the completion of which the

member upon resignation from service is entitled only to a refund of his or her accumulated retirement contributions as provided in this part.

SEC. 13. Section 22161 of the Education Code is amended to read:

22161. "Public school" means any day or evening elementary school, and any day and evening secondary school, community college, technical school, kindergarten school, and prekindergarten school established by the Legislature, or by municipal or district authority.

SEC. 14. Section 22162 of the Education Code is amended to read:

22162. "Regular interest", with respect to the Defined Benefit Program, is interest that is compounded annually based upon the annual equivalent of the prior year's average yield to maturity on the investment grade fixed-income securities with respect to the Defined Benefit Program. The regular interest rate shall be adopted annually by the board as a plan amendment.

SEC. 15. Section 22163 of the Education Code is amended to read:

22163. "Reinstatement" means the terminating of a service or disability retirement allowance and the changing of status from a retired member to an inactive member or an active member.

SEC. 16. Section 22165 of the Education Code is amended to read:

22165. "Retirement" means a change in status from an inactive member or an active member to a retired member.

SEC. 17. Section 22170 of the Education Code is amended to read:

22170. "Service" means service performed for compensation in a position subject to coverage under the Defined Benefit Program, except as otherwise specifically provided in this part.

SEC. 18. Section 22175 of the Education Code is repealed.

SEC. 19. Section 22201 of the Education Code is amended to read:

22201. (a) The board shall set policy and shall have the sole power and authority to hear and determine all facts pertaining to application for benefits under the plan or any matters pertaining to administration of the plan and the system.

(b) The board shall meet at least once every calendar quarter at such times as it may determine. The meetings shall be presided over by the chairperson. In the event of the chairperson's absence from a meeting the vice chairperson shall act as presiding officer and perform all other duties of the chairperson.

SEC. 20. Section 22207 of the Education Code is amended to read:

22207. The board shall perform any other acts necessary for the administration of the system and the plan in carrying into effect the provisions of this part and Part 14 (commencing with Section 26000).

SEC. 21. Section 22212 of the Education Code is amended to read:

22212. The board shall appoint such employees as are necessary to administer the plan and the system.

SEC. 22. Section 22216 of the Education Code is amended to read:

22216. (a) The board shall annually adopt as a plan amendment with respect to the Defined Benefit Program the rate of credited

interest to be credited to members' accumulated retirement contributions for service performed after June 30, 1935, and the accumulated annuity deposit contributions excluding all accumulated contributions while being paid as disability allowances, family allowances, and retirement allowances.

(b) The board shall credit interest to all other accumulated reserves at the actuarially assumed interest rate.

SEC. 23. Section 22222 of the Education Code is amended to read:

22222. The board may adjust the amounts of the death payments based on changes in the All Urban California Consumer Price Index, and shall adopt as a plan amendment with respect to the Defined Benefit Program any adjusted amount, provided that the most recent actuarial valuation report indicates that the adjustment would not increase the normal cost.

SEC. 24. Section 22223 of the Education Code is amended to read:

22223. The members of the board who are not members of the Defined Benefit Program or participants of the Cash Balance Benefit Program and who are appointed by the Governor pursuant to Section 22200 shall receive one hundred dollars ($100) for every day of actual attendance at meetings of the board or any meeting of any committee of the board of which the person is a member, and that is conducted for the purpose of carrying out the powers and duties of the board, together with their necessary traveling expenses incurred in connection with performance of their official duties.

SEC. 25. Section 22224 of the Education Code is amended to read:

22224. Members of the Defined Benefit Program and participants of the Cash Balance Benefit Program, who are either appointed to the board by the Governor pursuant to Section 22200, or who are appointed by the board to serve on a committee or subcommittee of the board or a panel of the system, shall be granted, by his or her employer, sufficient time away from regular duties, without loss of compensation or other benefits to which the person is entitled by reason of employment, to attend meetings of the board or any of its committees or subcommittees of which the person is a member, or to serve as a member of a panel of the system, and to attend to the duties expected to be performed by the person.

SEC. 26. Section 22225 of the Education Code is amended to read:

22225. (a) The compensation of the members of the Defined Benefit Program and participants of the Cash Balance Benefit Program who are appointed to the board, or by the board to a committee or subcommittee, or to a panel of the system, shall not be reduced by his or her employer for any absence from service occasioned by attendance upon the business of the board, pursuant to Section 22224.

(b) Each employer that employs either a member of the Defined Benefit Program or a participant of the Cash Balance Benefit Program appointed pursuant to Section 22224 and that employs a person to replace the member or participant during attendance at

meetings of the board, its committees or subcommittees, or when serving as a member of a panel of the system, or when carrying out other duties approved by the board, shall be reimbursed from the retirement fund for the cost incurred by employing a replacement.

SEC. 27. Section 22250 of the Education Code is amended to read:

22250. The board and its officers and employees of the system shall discharge their duties with respect to the system and the plan solely in the interest of the members and beneficiaries of the Defined Benefit Program as well as the participants and beneficiaries of the Cash Balance Benefit Program as follows:

(a) For the exclusive purpose of the following:

(1) Providing benefits to members and beneficiaries of the Defined Benefit Program as well as the participants and beneficiaries of the Cash Balance Benefit Program.

(2) Defraying reasonable expenses of administering the plan.

(b) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with those matters would use in the conduct of an enterprise of a like character and with like aims.

(c) By diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so.

(d) In accordance with the documents and instruments governing the plan and the system insofar as those documents and instruments are consistent with this part and Part 14 (commencing with Section 26000).

SEC. 28. Section 22251 of the Education Code is amended to read:

22251. (a) Except as provided in subdivision (b), the assets of the plan shall never inure to the benefit of an employer and shall be held for the exclusive purposes of providing benefits to members and beneficiaries of the Defined Benefit Program as well as the participants and beneficiaries of the Cash Balance Benefit Program and defraying reasonable expenses of administering the plan and the system.

(b) In the case of a contribution that is made by an employer by a mistake of fact, subdivision (a) shall not prohibit the return of that contribution within one year after the system knows, or should know in the ordinary course of business, that the contribution was made by a mistake of fact.

SEC. 29. Section 22252 of the Education Code is amended to read:

22252. Except as otherwise provided by law, the board and its officers and employees of the system shall not cause the system to engage in a transaction if they know or should know that the transaction constitutes a direct or indirect:

(a) Sale or exchange, or leasing, of any property from the system to a member or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, for less than adequate consideration, or from a member or

beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, to the system for more than adequate consideration.

(b) Lending of money or other extension of credit from the system to a member or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, without the receipt of adequate security and a reasonable rate of interest, or from a member or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, with the provision of excessive security or an unreasonably high rate of interest.

(c) Furnishing of goods, services, or facilities from the system to a member or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, for less than adequate consideration, or from a member, or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, to the system for more than adequate consideration.

(d) Transfer to, or use by or for the benefit of, a member or beneficiary of the Defined Benefit Program, as well as a participant or beneficiary of the Cash Balance Benefit Program, of any assets of the plan for less than adequate consideration.

(e) Acquisition, on behalf of the system, of any employer security, real property, or loan.

SEC. 30. Section 22253 of the Education Code is amended to read:

22253. The board and its officers and employees of the system shall not do any of the following:

(a) Deal with the assets of the plan and the system in their own interest or for their own account.

(b) In their individual or in any other capacity, act in any transaction involving the system on behalf of a party, or represent a party, whose interests are adverse to the interests of the plan or the interests of the members and beneficiaries of the Defined Benefit Program, as well as participants and beneficiaries of the Cash Balance Benefit Program.

(c) Receive any consideration for their personal account from any party conducting business with the system in connection with a transaction involving the assets of the plan.

SEC. 31. Section 22302 of the Education Code is amended to read:

22302. (a) The board shall establish an ombudsman position to serve as an advocate for the members of the Defined Benefit Program and participants of the Cash Balance Benefit Program. The duties of the ombudsman position shall include reviewing and making recommendations to the chief executive officer regarding complaints by school employees, members, employee organizations, the Legislature, or the public regarding actions of the employees of the system.

(b) It is the intent of the Legislature that the salary of the position of ombudsman be offset, as much as possible, through savings realized from a reduction in interest payments on delinquent benefits to members, and through a more efficient and improved public relations program.

SEC. 32. Section 22303.5 of the Education Code is amended to read:

22303.5. (a) Notwithstanding any other provision of law, the board shall offer a midcareer retirement information program for the benefit of all members.

(b) In implementing this section, the board shall develop plans for the development and delivery of information to enhance awareness of the features and benefits of the Defined Benefit Program, and services of the system, federal Social Security Act programs and benefits as they apply to members, and awareness of personal planning responsibilities. This information shall be provided to assist members in understanding the importance of financial, legal, estate, and personal planning, and how choices and options offered by the system may impact retirement.

(c) The board, at a public meeting, may assess a participation fee for the recovery of all startup and ongoing expenses of the midcareer information program.

SEC. 33. Section 22305 of the Education Code is amended to read:

22305. Any rules and regulations adopted by the board for the purpose of the administration of this part and Part 14 (commencing with Section 26000), and not inconsistent with this part and Part 14 (commencing with Section 26000), have the force and effect of law.

SEC. 34. Section 22306 of the Education Code is amended to read:

22306. (a) Information filed with the system by a member, participant, or beneficiary of the plan is confidential and shall be used by the system for the sole purpose of carrying into effect the provisions of this part. No official or employee of the system who has access to the individual records of a member, participant, or beneficiary shall divulge any confidential information concerning those records to any person except in the following instances:

(1) To the member, participant or beneficiary to whom the information relates.

(2) To the authorized representative of the member, participant or beneficiary.

(3) To the governing board of the member's or participant's current or former employer.

(4) To any department, agency, or political subdivision of this state.

(5) To other individuals as necessary to locate a person to whom a benefit may be payable.

(b) Information filed with the system in a beneficiary designation form may be released after the death of the member or participant

to those persons who may provide information necessary for the distribution of benefits.

(c) The information is not open to inspection by anyone except the board and its officers and employees of the system, and any person authorized by the Legislature to make inspections.

SEC. 35. Section 22308 of the Education Code is amended to read:

22308. (a) Subject to subdivision (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any member or beneficiary of the Defined Benefit Program, and of any participant or beneficiary of the Cash Balance Benefit Program, if all of the following facts exist:

(1) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(2) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

(b) Failure by a member, participant or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(c) Subject to subdivision (d), the board may correct all actions taken as a result of errors or omissions of the employer or this system.

(d) The duty and power of the board to correct errors and omissions, as provided in this section, shall terminate upon the expiration of obligations of the board, system, and plan to the party seeking correction of the error or omission, as those obligations are defined by Section 22008.

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a), (b), and (c) are adjusted to be the same that they would have been if the act that was taken or would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a), (b), and (c) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a), (b), and (c) cannot be adjusted to be the same as they would have been if the error or omission had not occurred.

SEC. 36. Section 22313 of the Education Code is amended to read:

22313. (a) No adjustment shall be included in new rates of contribution adopted by the board on the basis of an investigation,

valuation, and determination or because of amendment to the Teachers' Retirement Law with respect to the Defined Benefit Program, for time prior to the effective date of the adoption or amendment, as the case may be.

(b) No action of the board, other than correction of errors in calculating the allowance or annuity at the time of retirement, disability or death of a member shall change the allowance or annuity payable to a retired member or beneficiary prior to the date the action is taken.

SEC. 37. Section 22315 of the Education Code is amended to read:

22315. (a) The Legislature hereby finds and declares that it is the intent of the Legislature in enacting this section and Section 22316 that members of the Defined Benefit Program not be adversely impacted, to the extent deemed reasonable, by the application of Section 415 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 415).

(b) The system shall work closely with teacher organizations to develop a supplemental plan that, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code of 1986, maintains the future retirement benefits of the members and the fiscal integrity of the retirement fund. The supplemental plan should not result in any additional liability to the employer.

(c) The system shall also monitor the benefits of its members and notify affected individuals of their options, if deemed appropriate by the system.

SEC. 38. Section 22316 of the Education Code is amended to read:

22316. (a) Notwithstanding any other provision of this part, the benefits payable to any person who becomes a member of the Defined Benefit Program on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code of 1986 without regard to Section 415(b)(2)(F) of the Internal Revenue Code of 1986.

(b) Notwithstanding any other provision of law, the benefits payable under this part to any person who became a member of the Defined Benefit Program prior to January 1, 1990, shall not be less than the accrued benefit of the member, determined without regard to any amendment to the plan with respect to the Defined Benefit Program made after October 14, 1987, and as provided in Section 415(b)(10) of the Internal Revenue Code of 1986.

(c) The board shall provide to each employer a notice of the content and effect of subdivision (a) for distribution to each person who, for the first time, becomes a member of the Defined Benefit Program on or after January 1, 1990.

SEC. 39. Section 22317 of the Education Code is amended to read:

22317. (a) With respect to members of the Defined Benefit Program with membership effective dates of December 31, 1989, and earlier, benefit enhancements due to a plan amendment enacted

after October 14, 1987, with respect to the Defined Benefit Program, are subject to the limitations imposed by Section 415 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 415).

(b) With respect to members of the Defined Benefit Program with membership effective dates of January 1, 1990, and later, retirement benefits under this part, including enhancements due to a plan amendment with respect to the Defined Benefit Program, are subject to the limitations imposed by Section 415 of the Internal Revenue Code of 1986.

(c) With respect to members described in subdivision (a) or (b), or beneficiaries of those persons, a change in the benefit structure of the plan under this part pursuant to a plan amendment with respect to the Defined Benefit Program shall not be subject to Section 415(b)(5)(D) of the Internal Revenue Code of 1986 in the case of all plan amendments enacted before, on, or after August 3, 1992, with respect to the Defined Benefit Program.

SEC. 40. Section 22317.5 of the Education Code is amended to read:

22317.5. The amount of compensation that is taken into account in computing benefits payable under this part to any person who first becomes a member of the Defined Benefit Program on or after July 1, 1996, shall not exceed the annual compensation limitations prescribed by Section 401(a)(17) of Title 26 of the United States Code upon public retirement systems, as that section may be amended from time to time and as that limit may be adjusted by the Commissioner of Internal Revenue for increases in cost of living. The determination of compensation for each 12-month period shall be subject to the annual compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average annual compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period, shall be subject to the annual compensation limit applicable to that period.

Notwithstanding any other provision of this part, no member contribution shall be paid upon any compensation in excess of the annual compensation limitations prescribed by Section 401(a)(17) of Title 26 of the United States Code.

SEC. 41. Section 22327 of the Education Code is amended to read:

22327. Notwithstanding any other provision of law, the Employment Development Department shall disclose to the board information in its possession relating to the earnings of any person who is receiving a disability benefit from the plan. The earnings information shall be released to the board only upon written request from the board specifying that the person is receiving disability benefits from the plan. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing. The board shall notify recipients of disability

benefits that earnings information shall be obtained from the Employment Development Department upon request by the board. The board shall not release any earnings information received from the Employment Development Department to any person, agency, or other entity. The system shall reimburse the Employment Development Department for all reasonable administrative expenses incurred pursuant to this section.

SEC. 42. Section 22354 of the Education Code is amended to read:

22354. (a) The board shall, pursuant to the state civil service statutes, either contract with, or establish and fill full-time positions for, investment managers who are experienced and knowledgeable in corporate management issues to monitor each corporation any of whose shares are owned by the plan and to advise the board on the voting of the shares owned by the plan and on the responses of the system to merger proposals and tender offers and all other matters pertaining to corporate governance.

(b) Notwithstanding Section 13340 of the Government Code, there is hereby continuously appropriated, without regard to fiscal years, from the retirement fund, an amount sufficient to pay all costs arising from this section.

SEC. 43. Section 22358 of the Education Code is repealed.

SEC. 44. Section 22450 of the Education Code is amended to read:

22450. (a) Each member and beneficiary shall furnish to the board any information affecting his or her status as a member or beneficiary of the Defined Benefit Program as the board requires.

(b) A member who has not had any creditable service reported during the prior school year shall provide the system with his or her current mailing address and beneficiary information.

SEC. 45. Section 22500 of the Education Code is amended to read:

22500. All persons who were members of the California State Teachers' Retirement System on June 30, 1996, are members of the Defined Benefit Program under the plan.

SEC. 46. Section 22501 of the Education Code is amended to read:

22501. (a) Any person employed to perform creditable service on a full-time basis who is not already a member of the Defined Benefit Program under the plan shall become a member as of the first day of employment, unless excluded from membership pursuant to Section 22601.

(b) Creditable service in more than one position shall not be aggregated for the purpose of determining mandatory membership under this section.

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 47. Section 22502 is added to the Education Code, to read:

22502. (a) Any person employed to perform creditable service on a part-time basis who is not already a member of the Defined Benefit Program shall become a member as of the first day of employment to perform creditable service for 50 percent or more of

the full-time equivalent for the position, unless excluded from membership pursuant to Section 22601.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 48. Section 22503 is added to the Education Code, to read:

22503. (a) Any person employed to perform creditable service as a substitute teacher who is not already a member of the Defined Benefit Program shall become a member as of the first day of the pay period following the pay period in which the person performed 100 or more complete days of creditable service during the school year in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 49. Section 22504 is added to the Education Code, to read:

22504. (a) Any person employed on a part-time basis who is not already a member of the Defined Benefit Program shall become a member on the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, in one school district, community college district, or county superintendent's office, unless excluded from membership pursuant to Section 22601.

(b) This section shall not apply to persons employed on a part-time basis by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 50. Section 22508 of the Education Code is amended to read:

22508. (a) A member who becomes employed by the same or a different school district, community college district, or a county superintendent to perform service that requires membership in a different public retirement system, may elect to have that service subject to coverage by the Defined Benefit Program of this plan and excluded from coverage by the other public retirement system. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire in the position requiring membership in the other public retirement system. If that election is made, the service performed for the employer after the date of hire shall be considered creditable service for purposes of this part.

(b) A member of the Public Employees' Retirement System who is employed by a school district, community college district, or a county superintendent and who is subsequently employed to perform creditable service subject to coverage by the Defined Benefit Program of the State Teachers' Retirement Plan may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage by the Defined Benefit Program. The election shall be made in writing on a form prescribed by this system within 60 days from the date of hire to perform creditable service. If that election is made, creditable service performed for the employer after the date of hire shall be subject to coverage by the Public Employees' Retirement System.

SEC. 51. Section 22508.5 of the Education Code is amended to read:

22508.5. (a) Any person who is a member of the Defined Benefit Program of the State Teachers' Retirement plan employed by a community college district who subsequently is employed by the Board of Governors of the California Community Colleges to perform duties that require membership in a different public retirement system, shall be excluded from membership in that different system if he or she elects, in writing, and files that election in the office of the State Teachers' Retirement System within 60 days after the person's entry into the new position, to continue as a member of the Defined Benefit Program. Only a person who has achieved plan vesting is eligible to elect to continue as a member of the program.

(b) A member of the Public Employees' Retirement System who is employed by the Board of Governors of the California Community Colleges who subsequently is employed by a community college district to perform creditable service subject to coverage by this plan, may elect to have that service subject to coverage by the Public Employees' Retirement System and excluded from coverage by this plan pursuant to Section 20309 of the Government Code.

(c) This section shall apply to changes in employment effective on or after January 1, 1998.

SEC. 52. Section 22513 of the Education Code is amended to read:

22513. Members of the Defined Benefit Program who elect membership in the Public Employees' Retirement System and have achieved plan vesting according to Section 22156 shall retain the vested rights to survivor and disability benefits under this part until they qualify for the similar benefits in the Public Employees' Retirement System.

SEC. 53. Section 22515 of the Education Code is amended to read:

22515. Persons excluded from membership pursuant to Sections 22601.5, 22602, and 22604 may elect membership in the Defined Benefit Program at any time while employed to perform creditable service subject to coverage under that program. The election shall be in writing on a form prescribed by this system, and shall be filed in

the office of this system prior to submission of contributions. The election is irrevocable, and shall remain in effect until the member terminates employment and receives a refund of accumulated retirement contributions. The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 54. Section 22516 of the Education Code is amended to read:

22516. (a) Nothing in this chapter shall be construed or applied to exclude from membership in the Defined Benefit Program any person employed to perform creditable service at a level that requires mandatory membership in the program for which he or she has the right to elect membership in the program or another retirement system and who elects membership in the other retirement system, or who is employed to perform creditable service at a level that does not require mandatory membership in the Defined Benefit Program.

(b) Service performed after becoming a member of another retirement system shall not be credited to the member under this part, nor shall contributions or benefits under this part be based upon that service or the compensation received by the member during that period of service, except as provided in the definition of "final compensation" contained in Section 22133.

SEC. 55. Section 22600 of the Education Code is repealed.

SEC. 56. Section 22601.5 of the Education Code is amended to read:

22601.5. (a) Any person who is not already a member of the plan who is employed to perform creditable service and whose basis of employment is less than 50 percent of the full-time equivalent for the position is excluded from mandatory membership in the plan.

(b) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) This section shall be deemed to have become operative on July 1, 1996.

SEC. 57. Section 22602 of the Education Code is amended to read:

22602. (a) Any person who is not already a member of the plan who is employed as a substitute and who performs less than 100 complete days of creditable service in one school district, community college district, or county superintendent's office during the school year is excluded from mandatory membership in the plan.

(b) This section shall not apply to employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 58. Section 22604 of the Education Code is amended to read:

22604. (a) Any person who is not already a member of the plan who is employed on a part-time basis, and who performs less than 60 hours of creditable service in a pay period if employed on an hourly basis, or less than 10 days of creditable service in a pay period if employed on a daily basis, in one school district, community college district, or county superintendent's office is excluded from mandatory membership in the plan.

(b) This section shall not apply to employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(c) The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 59. Section 22650 of the Education Code is amended to read:

22650. This chapter establishes the power of a court in a dissolution of marriage or legal separation action with respect to community property rights in accounts with the plan under this part and establishes and defines the rights of nonmember spouses in the plan under this part.

SEC. 60. Section 22651 of the Education Code is amended to read:

22651. For purposes of this chapter and Section 23300, "nonmember spouse" means the spouse or former spouse who is being or has been awarded a community property interest in the service credit and accumulated retirement contributions or the benefits of a member under this part. A nonmember spouse who is awarded a separate account of service credit and accumulated retirement contributions or who receives a retirement allowance under this part, or who is awarded an interest in a member's retirement allowance under this part is not a member.

SEC. 61. Section 22652 of the Education Code is amended to read:

22652. (a) Upon the legal separation or dissolution of marriage of a member, the court shall include in the judgment or a court order the date on which the parties separated.

(b) The court may order in the judgment or court order that the accumulated retirement contributions and service credit under this part that are attributable to periods of service during the marriage be divided into two separate and distinct accounts in the name of the member and the nonmember spouse, respectively. Any service credit or accumulated retirement contributions under this part that are not explicitly awarded by the judgment or court order shall be deemed the exclusive property of the member in the Defined Benefit Program.

(c) The determination of the court of community property rights pursuant to this section shall be consistent with this chapter and shall address the rights of the nonmember spouse, including, but not limited to, the following:

(1) The right to a retirement allowance under this part.

(2) The right to a refund of accumulated retirement contributions under this part.

(3) The right to redeposit accumulated retirement contributions which are eligible for redeposit under this part by the member under Sections 23200 to 23203, inclusive, and the shares of the member and the nonmember spouse of the eligible redeposit amount.

(4) The right to purchase additional service credit under this part which is eligible for purchase by the member under Sections 22800 to 22810, inclusive, and the shares of the member and the nonmember spouse of the service credit eligible for purchase.

SEC. 62. Section 22653 of the Education Code is amended to read:

22653. (a) The nonmember spouse who is awarded a separate account under this part pursuant to Section 22652 is not a member of the Defined Benefit Program based on that award. The nonmember spouse is entitled only to rights and benefits based on that award explicitly established by this chapter.

(b) This section shall not be construed to limit any right arising from the account of a nonmember spouse under this part that exists because the nonmember spouse is or was employed to perform creditable service subject to coverage by the Defined Benefit Program.

SEC. 63. Section 22655 of the Education Code is amended to read:

22655. (a) Upon the legal separation or dissolution of marriage of a retired member, the court may include in the judgment or court order a determination of the community property rights of the parties in the retirement allowance under this part of the retired member consistent with this section. Upon election under subparagraph (B) of paragraph (3) of subdivision (a) of Section 2610 of the Family Code, the court order awarding the nonmember spouse a community property share in the benefits of a retired member shall be consistent with this section.

(b) If the court does not award the entire retirement allowance under this part to the retired member and the retired member is receiving a retirement allowance that has not been modified pursuant to Section 24300, the court shall require only that the system pay the nonmember spouse, by separate warrant from the plan, his or her community property share of the retirement allowance under this part of the retired member.

(c) If the court does not award the entire retirement allowance under this part to the retired member and the retired member is receiving an allowance which has been actuarially modified pursuant to Section 24300, the court shall order only one of the following:

(1) The retired member shall maintain the retirement allowance under this part without change.

(2) The retired member shall cancel the option under which the retirement allowance is modified under this part pursuant to Section 24305 and select a new joint and survivor option or a new beneficiary or both, and the system shall pay the nonmember spouse, by separate warrant from the plan, his or her community property share of the

retirement allowance under this part of the retired member, the option beneficiary, or both.

(3) The retired member shall cancel the option under which the retirement allowance is modified under this part pursuant to Section 24305 and select an unmodified retirement allowance and the system shall pay the nonmember spouse, by separate warrant from the plan, his or her community property share of the retirement allowance of the retired member.

(d) If the option beneficiary under this part, other than the nonmember spouse, predeceases the retired member, the court shall order the retired member to select a new option beneficiary under this part pursuant to Section 24306 and shall order the system to pay the nonmember spouse, by separate warrant from the plan, his or her share of the community property interest in the retirement allowance under this part of the retired member or the new option beneficiary, or both.

(e) The right of the nonmember spouse to receive his or her community property share of the retirement allowance under this part of the retired member under this section shall terminate upon the death of the nonmember spouse. However, the nonmember spouse may designate a beneficiary to receive his or her community property share of the retired member's accumulated retirement contributions under this part in the event that accumulated retirement contributions become payable.

SEC. 64. Section 22656 of the Education Code is amended to read:

22656. No judgment or court order issued pursuant to this chapter is binding on the plan with respect to the Defined Benefit Program until the plan has been joined as a party to the action and has been served with a certified copy of the judgment or court order.

SEC. 65. Section 22657 of the Education Code is amended to read:

22657. (a) The following provisions shall apply to a nonmember spouse as if he or she were a member under this part: Sections 22107, 22306, 22906, 23802, subdivisions (a) and (b) of Section 24600, 24601, 24602, 24603, 24605, 24606, 24607, 24608, 24611, 24612, 24613, 24616, and 24617.

(b) Notwithstanding subdivision (a), this section shall not be construed to establish any right for the nonmember spouse under this part that is not explicitly established in Sections 22650 to 22655, inclusive, and Sections 22658 to 22665, inclusive.

SEC. 66. Section 22658 of the Education Code is amended to read:

22658. (a) A separate account awarded to a nonmember spouse pursuant to Section 22652 shall be administered independently of the member's account.

(b) Accumulated contributions, service credit, and final compensation attributable to a separate account of a nonmember spouse under this part shall not be combined in any way or for any purpose with the accumulated contributions, service credit, and final

compensation of any other separate account of the nonmember spouse.

(c) Accumulated contributions, service credit, and final compensation attributable to the separate account of a nonmember spouse shall not be combined in any way or for any purpose with the accumulated contributions, service credit, and final compensation of an account that exists under this part because the nonmember spouse is employed or has been employed to perform creditable service subject to coverage under the Defined Benefit Program.

SEC. 67. Section 22659 of the Education Code is amended to read:

22659. Upon being awarded a separate account or an interest in the retirement allowance of a retired member under this part, a nonmember spouse shall provide the system with proof of his or her date of birth, social security number, and any other information requested by the system, in the form and manner requested by the system.

SEC. 68. Section 22660 of the Education Code is amended to read:

22660. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to designate, pursuant to Sections 23300 to 23304, inclusive, a beneficiary or beneficiaries to receive the accumulated retirement contributions remaining in the separate account of the nonmember spouse on his or her date of death, and any accrued allowance attributable to the separate account which is unpaid on the date of the death of the nonmember spouse under this part.

(b) This section shall not be construed to provide the nonmember spouse with any right to elect to modify a retirement allowance under Section 24300.

SEC. 69. Section 22661 of the Education Code is amended to read:

22661. (a) The nonmember spouse who is awarded a separate account under this part shall have the right to a refund of the accumulated retirement contributions in the account of the nonmember spouse under this part.

(b) The nonmember spouse shall file an application on a form provided by the system to obtain the refund.

(c) The refund under this part is effective when the system deposits in the United States mail an initial warrant drawn in favor of the nonmember spouse and addressed to the latest address for the nonmember spouse on file in the system. If the nonmember spouse has elected on a form provided by the system to transfer all or a specified portion of the accumulated contributions that are eligible for direct trustee-to-trustee transfer to the trustee of a qualified plan under Section 402 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 402), deposit in the United States mail of a notice that the requested transfer has been made constitutes a return of the nonmember spouse's accumulated contributions.

(d) The nonmember spouse is deemed to have permanently waived all rights and benefits pertaining to the service credit under

this part and represented by the accumulated retirement contributions when the refund becomes effective.

(e) The nonmember spouse may not cancel a refund under this part after the refund is effective.

(f) The nonmember spouse shall have no right to elect to redeposit the refunded accumulated retirement contributions under this part after the refund is effective and shall have no right to redeposit under Section 22662 or purchase additional service credit under Section 22663 after the refund becomes effective.

(g) If the total service credit in the separate account of the nonmember spouse under this part, including service credit purchased under Sections 22662 and 22663, is less than two and one-half years, the board shall refund the accumulated retirement contributions in the account.

SEC. 70. Section 22662 of the Education Code is amended to read:

22662. The nonmember spouse who is awarded a separate account under this part may redeposit accumulated retirement contributions previously refunded to the member in accordance with the determination of the court pursuant to Section 22652.

(a) The nonmember spouse may redeposit under this part only those accumulated retirement contributions that were previously refunded to the member and in which the court has determined the nonmember spouse has a community property interest.

(b) The nonmember spouse shall inform the system in writing of his or her intent to redeposit within 180 days after the judgment or court order addressing the redeposit rights of the nonmember spouse is entered. The nonmember spouse shall elect to redeposit on a form provided by the system within 30 days after the system mails an election form and the billing.

(c) If the nonmember spouse elects to redeposit under this part, he or she shall repay the accumulated retirement contributions and shall pay regular interest from the date of the refund to the date of payment.

(d) An election to redeposit shall be considered an election to repay all accumulated retirement contributions previously refunded under this part in which the nonmember spouse has a community property interest. All payments shall be received by the system before the effective date of retirement of the nonmember spouse under this part. If any payment due because of the election is not received at the system's office in Sacramento within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(e) The right of the nonmember spouse to redeposit shall be subject to Section 23203.

(f) The member shall not have a right to redeposit the share of the nonmember spouse in the previously refunded accumulated retirement contributions under this part whether or not the nonmember spouse elects to redeposit. However, any accumulated

retirement contributions previously refunded under this part and not explicitly awarded to the nonmember spouse under this part by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 71. Section 22663 of the Education Code is amended to read:

22663. The nonmember spouse who is awarded a separate account under this part shall have the right to purchase additional service credit in accordance with the determination of the court pursuant to Section 22652.

(a) The nonmember spouse may purchase only the service credit that the court, pursuant to Section 22652, has determined to be the community property interest of the nonmember spouse.

(b) The nonmember spouse shall inform the system in writing of his or her intent to purchase additional service credit within 180 days after the date the judgment or court order addressing the right of the nonmember spouse to purchase additional service credit is entered. The nonmember spouse shall elect to purchase additional service credit on a form provided by the system within 30 days after the system mails an election form and billing.

(c) If the nonmember spouse elects to purchase additional service credit, he or she shall pay, prior to retirement under this part, all contributions with respect to the additional service at the contribution rate for additional service credit in effect at the time of election and regular interest from July 1 of the year following the year upon which contributions are based.

(1) (A) The nonmember spouse shall purchase additional service credit by paying the required contributions and interest in one lump sum, or in not more than 60 monthly installments, provided that no installment, except the final installment, shall be less than twenty-five dollars ($25). Regular interest shall be charged on the monthly unpaid balance if the nonmember spouse pays in installments.

(B) If any payment due because of the election is not received at the system's office in Sacramento within 120 days of its due date, the election shall be canceled and any payments made under the election shall be returned to the nonmember spouse.

(2) The contributions shall be based on the member's compensation earnable in the most recent school year during which the member was employed, preceding the date of separation established by the court pursuant to Section 22652.

(3) All payments of contributions and interest shall be received by the system before the effective date of the retirement of the nonmember.

(d) The nonmember spouse shall not have a right to purchase additional service credit under this part after the effective date of a refund of the accumulated retirement contributions in the separate account of the nonmember spouse.

(e) The member shall not have a right to purchase the community property interest of the nonmember spouse of additional service credit under this part whether or not the nonmember spouse elects to purchase the additional service credit. However, any additional service credit eligible for purchase that is not explicitly awarded to the nonmember spouse by the judgment or court order shall be deemed the exclusive property of the member.

SEC. 72. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had performed at least five years of creditable California service during the period of marriage, at least one year of which had been performed subsequent to the most recent refund to the member of accumulated retirement contributions, if five of the member's six years of credited service immediately before the dissolution or legal separation had been in California. The credited service may include service credited to the account of the member as of the date of the dissolution or legal separation, previously refunded service, and permissive service credit which the member is eligible to purchase at the time of the dissolution or legal separation.

(2) The nonmember spouse has at least two and one-half years of credited service in his or her separate account.

(3) The nonmember spouse has attained the age of 55 years or more.

(b) A service retirement allowance of a nonmember spouse under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, which is executed no earlier than six months before the effective date of the retirement allowance.

(3) The effective date is no earlier than the first day of the month in which the application is received at the system's office in Sacramento and the effective date is after the date the judgment or court order pursuant to Section 22652 was entered.

(c) Upon service retirement at or over normal retirement age under this part, the nonmember spouse shall receive a retirement allowance that shall consist of an annual allowance payable in monthly installments equal to 2 percent of final compensation for each year of credited service. If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part and normal retirement age, the retirement allowance shall be reduced by one-half of 1 percent for

each full month, or fraction of a month, that will elapse until the nonmember spouse would have reached normal retirement age.

(1) In computing the retirement allowance of the nonmember spouse, the age of the nonmember spouse on the last day of the month in which the retirement allowance begins to accrue shall be used.

(2) Final compensation, for purposes of calculating the service retirement allowance of the nonmember spouse under this subdivision, shall be calculated according to the definition of final compensation in Section 22134, 22135, or 22136, whichever is applicable, and shall be based on the compensation earnable of the member up to the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

The nonmember spouse shall not be entitled to use any other calculation of final compensation.

(d) If the member is or was receiving a disability allowance under this part with an effective date before or on the date the parties separated as established in the judgment or court order pursuant to Section 22652, or at any time applies for and receives a disability allowance with an effective date that is before or coincides with the date the parties separated as established in the judgment or court order pursuant to Section 22652, the nonmember spouse shall not be eligible to retire until after the disability allowance of the member terminates.

If the member who is or was receiving a disability allowance returns to employment to perform creditable service subject to coverage under the Defined Benefit Program or has his or her allowance terminated under Section 24015, the nonmember spouse may not be paid a retirement allowance until at least six months after termination of the disability allowance and the return of the member to employment to perform creditable service subject to coverage under the Defined Benefit Program, or the termination of the disability allowance and the employment or self-employment of the member in any capacity, notwithstanding Section 22132. If at the end of the six-month period, the member has not had a recurrence of the original disability or has not had his or her earnings fall below the amounts described in Section 24015, the nonmember spouse may be paid a retirement allowance if all other eligibility requirements are met.

(1) The retirement allowance of the nonmember spouse under this subdivision shall be calculated as follows: the disability allowance the member was receiving, exclusive of the benefits for dependent children, shall be divided between the share of the member and the share of the nonmember spouse. The share of the nonmember spouse shall be the amount obtained by multiplying the disability allowance, exclusive of the benefits for dependent children, by the years of service credited to the separate account of the nonmember spouse, including service projected to the date of separation, and dividing by the projected service of the member. The nonmember spouse's

retirement allowance shall be the lesser of the share of the nonmember spouse under this subdivision or the retirement allowance under subdivision (c).

(2) The share of the member shall be the total disability allowance reduced by the share of the nonmember spouse. The share of the member shall be considered the disability allowance of the member for purposes of Section 24213.

(e) The nonmember spouse who receives a retirement allowance is not a retired member under this part. However, the allowance of the nonmember spouse shall be increased by application of the improvement factor and shall be eligible for the application of supplemental increases and other benefit maintenance provisions under this part, including, but not limited to, Sections 24411, 24412, and 24415 based on the same criteria used for the application of these benefit maintenance increases to the service retirement allowances of members.

SEC. 72.5. Section 22664 of the Education Code is amended to read:

22664. The nonmember spouse who is awarded a separate account shall have the right to a service retirement allowance under this part.

(a) The nonmember spouse shall be eligible to retire for service under this part if the following conditions are satisfied:

(1) The member had at least five years of credited service during the period of marriage, at least one year of which had been performed subsequent to the most recent refund to the member of accumulated retirement contributions. The credited service may include service credited to the account of the member as of the date of the dissolution or legal separation, previously refunded service, out-of-state service, and permissive service credit which the member is eligible to purchase at the time of the dissolution or legal separation.

(2) The nonmember spouse has at least two and one-half years of credited service in his or her separate account.

(3) The nonmember spouse has attained the age of 55 years or more.

(b) A service retirement allowance of a nonmember spouse under this part shall become effective upon any date designated by the nonmember spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonmember spouse has filed an application for service retirement on a form provided by the system, which is executed no earlier than six months before the effective date of the retirement allowance.

(3) The effective date is no earlier than the first day of the month in which the application is received at the system's office in Sacramento and the effective date is after the date the judgment or court order pursuant to Section 22652 was entered.

(c) Upon service retirement at or over normal retirement age under this part, the nonmember spouse shall receive a retirement allowance that shall consist of an annual allowance payable in monthly installments equal to 2 percent of final compensation for each year of credited service. If the nonmember spouse's retirement is effective at less than normal retirement age and between early retirement age under this part and normal retirement age, the retirement allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month, that will elapse until the nonmember spouse would have reached normal retirement age.

(1) In computing the retirement allowance of the nonmember spouse, the age of the nonmember spouse on the last day of the month in which the retirement allowance begins to accrue shall be used.

(2) Final compensation, for purposes of calculating the service retirement allowance of the nonmember spouse under this subdivision, shall be calculated according to the definition of final compensation in Section 22134, 22135, or 22136, whichever is applicable, and shall be based on the compensation earnable of the member up to the date the parties separated, as established in the judgment or court order pursuant to Section 22652.

The nonmember spouse shall not be entitled to use any other calculation of final compensation.

(d) If the member is or was receiving a disability allowance under this part with an effective date before or on the date the parties separated as established in the judgment or court order pursuant to Section 22652, or at any time applies for and receives a disability allowance with an effective date that is before or coincides with the date the parties separated as established in the judgment or court order pursuant to Section 22652, the nonmember spouse shall not be eligible to retire until after the disability allowance of the member terminates.

If the member who is or was receiving a disability allowance returns to employment to perform creditable service subject to coverage under the Defined Benefit Program or has his or her allowance terminated under Section 24015, the nonmember spouse may not be paid a retirement allowance until at least six months after termination of the disability allowance and the return of the member to employment to perform creditable service subject to coverage under the Defined Benefit Program, or the termination of the disability allowance and the employment or self-employment of the member in any capacity, notwithstanding Section 22132. If at the end of the six-month period, the member has not had a recurrence of the original disability or has not had his or her earnings fall below the amounts described in Section 24015, the nonmember spouse may be paid a retirement allowance if all other eligibility requirements are met.

(1) The retirement allowance of the nonmember spouse under this subdivision shall be calculated as follows: the disability allowance

the member was receiving, exclusive of the benefits for dependent children, shall be divided between the share of the member and the share of the nonmember spouse. The share of the nonmember spouse shall be the amount obtained by multiplying the disability allowance, exclusive of the benefits for dependent children, by the years of service credited to the separate account of the nonmember spouse, including service projected to the date of separation, and dividing by the projected service of the member. The nonmember spouse's retirement allowance shall be the lesser of the share of the nonmember spouse under this subdivision or the retirement allowance under subdivision (c).

(2) The share of the member shall be the total disability allowance reduced by the share of the nonmember spouse. The share of the member shall be considered the disability allowance of the member for purposes of Section 24213.

(e) The nonmember spouse who receives a retirement allowance is not a retired member under this part. However, the allowance of the nonmember spouse shall be increased by application of the improvement factor and shall be eligible for the application of supplemental increases and other benefit maintenance provisions under this part, including, but not limited to, Sections 24411, 24412, and 24415 based on the same criteria used for the application of these benefit maintenance increases to the service retirement allowances of members.

SEC. 73. Section 22665 of the Education Code is amended to read:

22665. The system shall include the service credit awarded to a nonmember spouse in the judgment or court order to determine the eligibility of a member for a retirement or disability allowance under this part. That portion of awarded service credit based on previously refunded contributions or on permissive service credit may not be used by the member for eligibility requirements until the member has redeposited or purchased his or her portion of the service credit. The member's service retirement allowance shall be calculated based on the service credit in the member's account on the effective date of service retirement.

SEC. 74. Section 22700 of the Education Code is amended to read:

22700. This chapter governs the computation of service to be credited under this part to a member of the Defined Benefit Program for the purpose of determining eligibility for benefits under the program, the amount of contributions required of the member in the program, and the amount of benefits paid to a retired member under the program.

SEC. 75. Section 22703 of the Education Code is amended to read:

22703. (a) Service shall be computed by school years and not by calendar years, portions of years served being accumulated and counted as service. All of the creditable service performed during any one school year subject to coverage under the Defined Benefit Program shall not count for more than one year.

(b) In lieu of any other benefits provided by this part, any member who performed service prior to July 1, 1956, shall receive retirement benefits for that service at least equal to the benefits which he or she would have received for that service under the provisions of this part as they existed on June 30, 1956. This paragraph does not apply to service which is credited in the San Francisco City and County Employees Retirement System.

SEC. 76. Section 22705 of the Education Code is amended to read:

22705. No service shall be included under this part for which a member of the Defined Benefit Program is entitled to receive a retirement benefit in a lump sum or installment payments, for other than military service, from any public retirement system other than this system, or under the American Gratuity Act No. 4151 relating to service in the Philippine Islands under which 15 or more years of creditable service has accrued, or the San Francisco City and County Employees Retirement System. If a retired member under this part becomes entitled to such a retirement benefit, his or her retirement allowance shall be reduced thereafter to exclude the service upon which the retirement benefit is based, without other change in his or her retirement status.

SEC. 77. Section 22705.5 is added to the Education Code, to read:

22705.5. Service subject to coverage by the San Francisco City and County Retirement System pursuant to Section 24701 is excluded from coverage in the Defined Benefit Program. The member shall retain the right to receive a retirement allowance for creditable service that is subject to coverage under the Defined Benefit Program unless he or she withdraws his or her accumulated retirement contributions for that service.

SEC. 78. Section 22706 of the Education Code is amended to read:

22706. A member shall not receive credit for service performed while receiving a retirement or disability allowance from the Defined Benefit Program.

SEC. 79. Section 22708 of the Education Code is amended to read:

22708. The calculations of retirement allowances under this part for state employees in the personal leave program shall include credit for service that would have been credited had the employee not been in the personal leave program. The costs that result from the increased service credit shall be paid for by the employer in a manner prescribed by the system.

SEC. 80. Section 22709 of the Education Code is amended to read:

22709. A member shall receive credit under this part for time during which the member is prevented from performing creditable service subject to coverage under the Defined Benefit Program, by act of God, or by reason of the closing of a school by any duly authorized officer or body. If by reason of a member's Japanese ancestry, the member was required by the Wartime Civil Control Administration to leave his or her teaching position in California and returned prior to July 1, 1972, to service subject to coverage under the

Defined Benefit Program, the system shall give the member four years of service credit under this part.

SEC. 81. Section 22710 of the Education Code is amended to read:

22710. (a) Service shall be credited under this part, upon payment of the contributions required under Sections 22901 and 22950, for that time during which a member is excused from performance of creditable service and for which the member receives workers' compensation, or compensation from an insurance carrier of the employer, due to injury or illness that arose out of and in the course of the member's employment. Service for that time shall be credited in the proportion that the creditable compensation paid to the member bears to the compensation earnable by the member.

(b) The amount of creditable compensation paid to the member shall not exceed the compensation earnable by the member during the period of absence specified in subdivision (a).

SEC. 82. Section 22711 of the Education Code is amended to read:

22711. (a) A member under this part shall be granted service credit for time during which the member serves as an elected officer of an employee organization while on a compensated leave of absence pursuant to Section 44987 or 87768.5, if all of the following conditions are met:

(1) The member was employed and performed creditable service subject to coverage under this Defined Benefit Program in the month prior to commencement of the leave of absence.

(2) The member makes contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

(3) The member's employer contributes to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis during the period the member served as an elected officer of the employee organization.

(b) The maximum period of time during which a member may serve as an elected officer and receive service credit pursuant to this section shall not exceed 12 calendar years.

SEC. 83. Section 22712 of the Education Code is amended to read:

22712. A member under this part shall receive credit for time served as an exchange teacher in any location.

SEC. 84. Section 22712.5 of the Education Code is amended to read:

22712.5. All members under this part who are employed by a school district, community college district, or superintendent of schools and who received credit during the school year ending June

30, 1996, for service performed as a community service teacher or in a classified position that does not qualify for membership in the Public Employees' Retirement System, shall continue to receive credit for that service performed after June 30, 1996, provided the member remains continuously employed to perform that service.

SEC. 85. Section 22713 of the Education Code is amended to read:

22713. (a) Notwithstanding any other provision of this chapter, the governing board of a school district or a community college district or a county superintendent of schools may establish regulations that allow an employee who is a member of the Defined Benefit Program to reduce his or her workload from full time to part time, and receive the service credit the member would have received if the member had been employed on a full-time basis and have his or her retirement allowance, as well as other benefits that the member is entitled to under this part, based, in part, on final compensation determined from the compensation earnable the member would have been entitled to if the member had been employed on a full-time basis.

(b) The regulations shall include, but shall not be limited to, the following:

(1) The option to reduce the member's workload shall be exercised at the request of the member and can be revoked only with the mutual consent of the employer and the member.

(2) The member shall have been employed full time to perform creditable service subject to coverage under the Defined Benefit Program for at least 10 years including five years immediately preceding the reduction in workload.

(3) The member shall not have had a break in service during the five years immediately preceding the reduction in workload. For purposes of this subdivision, sabbaticals and other approved leaves of absence shall not constitute a break in service. However, time spent on a sabbatical or other approved leave of absence shall not be used in computing the five-year full-time service requirement prescribed by this subdivision.

(4) The member shall have reached the age of 55 years prior to the reduction in workload.

(5) The period of the reduced workload shall not exceed 10 years.

(6) The reduced workload shall be equal to at least one-half of the full-time equivalent required by the member's contract of employment during his or her final year of full-time employment.

(7) The member shall be paid creditable compensation that is the pro rata share of the creditable compensation the member would have been paid had the member not reduced his or her workload.

(c) Prior to the reduction of a member's workload under this section, the employer in conjunction with the administrative staff of the State Teachers' Retirement System and the Public Employees' Retirement System, shall verify the member's eligibility for the reduced workload program.

(d) The member shall make contributions to the Teachers' Retirement Fund in the amount that the member would have contributed had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(e) The employer shall contribute to the Teachers' Retirement Fund at a rate adopted by the board as a plan amendment with respect to the Defined Benefit Program an amount based upon the creditable compensation that would have been paid to the member had the member performed creditable service on a full-time basis subject to coverage under the Defined Benefit Program.

(f) The employer shall maintain the necessary records to separately identify each member who participates in the reduced workload program pursuant to this section.

SEC. 86. Section 22714 of the Education Code is amended to read:

22714. (a) Whenever the governing board of a school district or a community college district or a county office of education, by formal action taken prior to January 1, 1999, determines pursuant to Section 44929 or 87488 that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging certificated employees or academic employees to retire for service and that the retirement will either: result in a net savings to the district or county office of education; result in a reduction of the number of certificated employees or academic employees as a result of declining enrollment; or result in the retention of certificated employees who are credentialed to teach in, or faculty who are qualified to teach in, teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited under this part to a member of the Defined Benefit Program if all of the following conditions exist:

(1) The member is credited with five or more years of service and retires for service under the provisions of Chapter 27 (commencing with Section 24201) during a period of not more than 120 days or less than 60 days, commencing no sooner than the effective date of the formal action of the employer that shall specify the period.

(2) The employer transfers to the retirement fund an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the allowance the member receives after receipt of service credit under this section and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board to equal the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account

established by Section 22400 and shall be subject to Sections 24414 and 24415. The transfer to the retirement fund shall be made in a manner, and time period not to exceed four years, that is acceptable to the Teachers' Retirement Board. The employer shall transfer the required amount for all eligible employees who retire pursuant to this section.

(3) The employer transmits to the retirement fund the administrative costs incurred by the system in implementing this section, as determined by the Teachers' Retirement Board.

(4) The employer has considered the availability of teachers or academic employees to fill the positions that would be vacated pursuant to this section.

(b) (1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction of the number of certificated employees as a result of declining enrollment, as computed pursuant to Section 42238.5; or (C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The county superintendent shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502. A district that qualifies under clause (B) of paragraph (1) shall also certify that it qualifies as a declining enrollment district as computed pursuant to Section 42238.5.

(3) The school district shall reimburse the county superintendent for all the costs of the county superintendent that result from the certification.

(c) (1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal action taken would result in either: (A) a net savings to the county office of education; (B) a reduction of the number of certificated employees as a result of declining enrollment; or (C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(d) (1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction in the number of academic employees as a result of declining

enrollment, as computed pursuant to subdivision (c) of Section 84701; or (C) the retention of faculty who are qualified to teach in teacher shortage disciplines.

(2) The chancellor shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5. A community college district that qualifies under clause (B) of paragraph (1) of subdivision (b) of this section shall also certify that it qualifies as a declining enrollment district as computed pursuant to subdivision (c) of Section 84701.

(3) The chancellor may request reimbursement from the community college for all administrative costs that result from the certification.

(e) The opportunity to be granted service credit pursuant to this section shall be available to all members employed by the school district, community college district, or county office of education who meet the conditions set forth in this section.

(f) The amount of service credit shall be two years.

(g) Any member of the Defined Benefit Program who retires under this part for service under the provisions of Chapter 27 (commencing with Section 24201) with service credit granted under this section and who subsequently reinstates shall forfeit the service credit granted under this section.

(h) This section shall not be applicable to any member otherwise eligible if the member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the effective date of the formal action, or if the member is not otherwise eligible to retire for service.

SEC. 87. Section 22715 of the Education Code is amended to read:

22715. (a) Notwithstanding any other provisions of this part, whenever the Governor, by executive order, determines that because of an impending curtailment of, or change in the manner of performing service, the best interest of the state would be served by encouraging the retirement of state employees, and that sufficient economies could be realized to offset any cost to state agencies resulting from this section, an additional two years of service shall be credited under this part to members of the Defined Benefit Program, who are state employees, if the following conditions exist:

(1) The member is credited with five or more years of service and retires during a period not to exceed 120 days or less than 60 days commencing no sooner than the date of issuance of the Governor's executive order specifying that period.

(2) The appointing power, as defined in Section 18524 of the Government Code, transfers to the retirement fund an amount determined by the board to equal the actuarial equivalent of the difference between the allowance the member receives after the

receipt of service credit under this section and the amount the member would have received without the service credit. The transfer to the retirement fund shall be made in a manner and time period acceptable to the employer and the board.

(3) The appointing power determines that it is electing to exercise the provisions of this section, pursuant to the Governor's order, and certifies to the Department of Finance and to the Legislative Analyst, as to the specific economies that would be realized if the additional service credit toward retirement were granted.

(b) As used in this section, "member" means a state employee who is employed in a job classification, department, or other organizational unit designated by the appointing power, as defined in Section 18524 of the Government Code.

(c) The amount of service credit shall be two years regardless of credited service, but shall not exceed the number of years intervening between the date of the member's retirement under this part and the date the member would be required to be retired because of age. The appointing power shall make the payment with respect to all eligible employees who retire pursuant to this section.

(d) Any member who qualifies under this section, upon subsequent reinstatement under this part, shall forfeit the service credit granted under this section.

(e) This section shall not be applicable to any member otherwise eligible if that member receives any unemployment insurance payments arising out of employment with an employer subject to this part during a period extending one year beyond the date of issuance of the executive order or if the member is not eligible to retire without the additional credit available under this section.

(f) The benefit provided by this section shall not be applicable to the employees of any appointing power until the Director of Finance approves the transmittal of funds by that appointing power or the Board of Regents or the Board of Trustees to the retirement fund pursuant to paragraph (2) of subdivision (a).

(g) The Director of Finance shall approve the transmittal of funds by the appointing power not sooner than 30 days after notification in writing of the necessity therefor to the chairperson of the committee in each house that considers appropriations and the chairperson of the Joint Legislative Budget Committee, or not sooner than any lesser time that the chairperson of the committee, or his or her designee, may in each instance determine. If there is any written communication between the Director of Finance and the Legislative Analyst, a copy of the communication shall be transmitted to the chairperson of each appropriate policy committee.

SEC. 88. Section 22716 of the Education Code is amended to read:

22716. Notwithstanding any other provision of law, a member of the Defined Benefit Program upon any subsequent service under unpaid contract or any other unpaid basis with the trustees, shall not

be required to forfeit the service credit granted under former Section 22732, as it read on June 29, 1993.

SEC. 89. Section 22718 of the Education Code is amended to read:

22718. (a) The Teachers' Retirement Board shall establish rules and regulations for the purpose of billing school employers for service credit granted for sick leave under this part, including, but not limited to, both of the following provisions:

(1) The billing shall be authorized only if the employer grants more than one day of sick leave per pay period of at least four weeks to members of the Defined Benefit Program.

(2) The employer shall be billed only for the present value of sick leave days granted in excess of one day per pay period of at least four weeks.

(b) If a school employer fails to pay a bill charged according to the rules and regulations established pursuant to subdivision (a), the Teachers' Retirement Board may request the Superintendent of Public Instruction or the Chancellor of the California Community Colleges, as appropriate, to reduce state apportionments to the school employer by an amount equal to the amount billed. The superintendent or chancellor shall make the reduction, and if requested by the board, direct the Controller to reduce the amount transferred from the General Fund to Section A or Section B, as appropriate, of the State School Fund by an equal amount, which shall instead be transferred to the Teachers' Retirement Fund.

SEC. 90. Section 22721 of the Education Code is amended to read:

22721. Except as provided in Section 22717, no service credit shall be granted under this part for any payment made for accumulated sick leave upon transfer from one employer to another, upon termination of service, upon retirement, or upon death. No contributions under this part shall be withheld from any such payments. Payments for accumulated sick leave shall be paid to the member by separate warrant and shall not be included in any payroll warrant issued to the member. The payments shall not be included in the determination of "final compensation" under this part. No continued leave of absence shall be granted a member solely for the purpose of allowing the member to receive compensation for accumulated sick leave for which the member could otherwise have elected to receive payment.

SEC. 91. Section 22800 of the Education Code is amended to read:

22800. (a) Claims for permissive and additional service credit under this part shall be corroborated by a statement from the superintendent of schools or custodian of records of the employer for which the service was performed.

(b) Claims for creditable service under this part performed outside the United States or in federal schools within the United States shall be corroborated by a statement from the custodian of records.

(c) When the official records of the service have been destroyed, the claim may be corroborated by one or more affidavits of knowledge of the service, preferably by persons who served with the member at the time the service was performed.

SEC. 92. Section 22802 of the Education Code is amended to read:

22802. (a) A member who was previously excluded from membership in the Defined Benefit Program may elect to receive credit for:

(1) Service as a substitute excluded under Section 22602.

(2) Service performed on a part-time basis excluded under Section 22601.5 or Section 22604.

(3) Adult education service excluded under Section 22603, as it read on December 31, 1995.

(4) Service as a school nurse excluded under Section 22606, as it read on December 31, 1995.

(5) Service performed in a position prior to the date the position was made subject to coverage under the Defined Benefit Program.

(6) Service subject to coverage under the Defined Benefit Program performed while a member of another California public retirement system, provided the member has ceased to be a member of, and has ceased to be entitled to benefits from, the other retirement system. The member shall not receive credit for the service if the member may redeposit withdrawn contributions and subsequently be eligible for any benefits based upon the same service or based upon other full-time service performed during the same period, from another California public retirement system.

(b) A member who elects to receive credit under this part for service performed while excluded from membership under the Defined Benefit Program shall pay the required contributions for all such service.

SEC. 93. Section 22805 of the Education Code is amended to read:

22805. (a) A member may elect to receive credit under this part for time served in the active military service of the United States or of this state, including active service in any uniformed auxiliary to any branch of that military service authorized as an auxiliary by the United States Congress or the California State Legislature, or in the full-time paid service of the American Red Cross prior to September 1957, if both of the following conditions exist:

(1) The time served was during war with any foreign power or during other national emergency, or in time of peace if the member was drafted for that service by the United States government.

(2) The member was employed to perform creditable service subject to coverage by the plan within one year prior to entering that service. Time included under this section shall be considered as served in the state in which the member was last employed before entering that service.

(b) Time during which the member is absent without compensation for other cause, on leave, or otherwise, shall not be included.

SEC. 94. Section 22806 of the Education Code is amended to read:

22806. (a) A member who is a state employee who retired on or after December 31, 1981, and who was at retirement a state employee may elect to receive credit under this part, of not to exceed four years, for time served of not less than one year, prior to membership in the Defined Benefit Program, in the armed forces of the United States or in the Merchant Marine of the United States prior to January 1, 1950. Service credit shall not be granted if that service terminated with a discharge under dishonorable conditions. The service credit to be accorded pursuant to this section for that service shall be on the basis of one year of credit for each five years of credited service, but shall not exceed a total of four years of service credit regardless of the number of years of either that service or subsequent service. A member electing to receive credit under this part for that service shall have been credited with at least 10 years of service on the date of election or the date of retirement.

(b) An election by a member with respect to service credit under this section may be made only while the member is in state or university employment, and a retired member shall have retired immediately following service as a member who was at retirement a state employee. The retirement allowance of a member who elects to receive service credit pursuant to this section shall be increased only with respect to the allowance payable on and after the date of election.

(c) A member who elects to become subject to this section shall pay all reasonable administrative costs and contributions, sufficient to cover the total employer and employee cost plus interest of the military service credit, at rates to be determined by the board. The amount shall be contributed in lump sum or by installments over the period and subject to those minimum payments as may be prescribed by regulations of the board. Payments for administrative costs shall be credited to the current appropriation for support of the board and available for expenditure by the board to fund positions deemed necessary by the board to implement this section.

(d) The board has no duty to locate or notify any member or to provide the name or address of any member, agency, or entity for the purpose of notifying those persons.

SEC. 95. Section 22807 of the Education Code is amended to read:

22807. (a) A member of the Defined Benefit Program who voluntarily requests or agrees to an extension of his or her original term of enlistment, service, or tour of duty shall not receive credit under this part for time served during the extension of military service after December 31, 1958.

(b) In no event shall a member receive credit for more than four years of military service performed after June 30, 1998, except where

otherwise authorized in accordance with Chapter 14.5 (commencing with Section 22850).

SEC. 96. Section 22808 of the Education Code is amended to read:

22808. A member of the Defined Benefit Program shall not be required to pay contributions under this part to receive credit for service under Section 22805 under any of the following conditions:

(a) The service was performed after September 15, 1940, and the member returned to employment subject to coverage under the Defined Benefit Program prior to March 19, 1948.

(b) The service was performed prior to January 1, 1950, and the member was continuously performing the service prior to that date and returned to employment subject to coverage under the Defined Benefit Program within six months following the termination of the service.

(c) The service was performed prior to September 14, 1978, and the member entered that service after December 31, 1949, and returned to employment subject to coverage under the Defined Benefit Program within six months following the termination of the service.

(d) The service was performed prior to January 1, 1992, and the member entered that service after August 1, 1990, and retired or returned to employment subject to coverage under the Defined Benefit Program and earned additional service credit within six months following the termination of that service or within six months after the completion of any period of rehabilitation offered by the United States government, excluding rehabilitation solely for educational purposes. Notwithstanding Section 22250, 22251, or 22253, employers of members subject to this section shall not be required to make the contributions required by Chapter 16 (commencing with Section 22950).

SEC. 97. Section 22809 of the Education Code is amended to read:

22809. A member of the Defined Benefit Program may elect to receive credit under this part for teaching service performed within and outside of this state in a war relocation center administered by the Wartime Civil Control Administration if all of the following conditions exist:

(a) By reason of the member's Japanese ancestry the member was placed in a war relocation center prior to becoming a member of the Defined Benefit Program.

(b) The member earned compensation for service in a teaching capacity in the relocation center.

(c) The member possessed a valid California teaching credential issued by the State Department of Education or had a bachelor's degree in education from a California postsecondary institution.

SEC. 98. Section 22810 of the Education Code is amended to read:

22810. (a) Any member of the Defined Benefit Program, who was a member of the program on June 30, 1944, may elect to receive credit under this part for the following service performed prior to

July 1, 1944, in other states, territories, or possessions of the United States, or in Canada:

(1) Service in a teaching position that in this state would be subject to coverage under the Defined Benefit Program.

(2) Service in a teaching position in a publicly supported and administered university or college.

(3) Service in a teaching position with the Civilian Conservation Corps or in an Indian school supported and administered by the United States government.

(4) Service in a publicly supported residential school for the deaf or the blind.

(b) In no event shall the member receive credit for this service if the member has received or is eligible to receive credit for the same service in another retirement system.

SEC. 99. Section 22821 of the Education Code is amended to read:

22821. A member's election to purchase out-of-state service credit pursuant to this chapter shall be submitted in writing and shall include information as required by the board.

SEC. 100. Section 22823 of the Education Code is amended to read:

22823. (a) A member who elects to receive credit for out-of-state service as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as appropriate, as determined by the board based on the most recent valuation of the Defined Benefit Program.

(b) (1) Any payment that a member may make to the system to obtain credit for out-of-state service pursuant to this chapter shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member of the amount required to purchase out-of-state service prior to the effective date of the applicable allowance, the member may make payment in full within 30 days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for out-of-state service credit shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 101. Section 22850 of the Education Code is amended to read:

22850. (a) The Legislature hereby declares its intent to provide benefits under this part to reemployed members who have been absent from a position of employment subject to coverage under the Defined Benefit Program to perform service in the uniformed services of the United States in accordance with the Uniformed

Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code).

(b) The system shall comply with Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, as that chapter may be amended from time to time.

(c) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and a period for which a member is absent from a position of employment for the purpose of an examination to determine the fitness of the member to perform any duty.

(d) "Uniformed services" means the Armed Forces of the United States of America, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

(e) Except as provided in Section 22851, no benefit shall accrue during the period of service in the uniformed services if the member does not return to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, as prescribed in Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code.

SEC. 102. Section 22851 of the Education Code is amended to read:

22851. The right to pension benefits under this part of a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, and is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be determined under this section.

(a) (1) A member shall be treated as not having incurred a break in service by reason of that member's eligible period or periods of service in the uniformed services.

(2) Each eligible period of service served by a member in the uniformed services shall, upon return to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services, be deemed to constitute service with the employer or employers toward plan vesting and eligibility for membership in the Defined Benefit Program.

(3) A member who returns to employment, with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall not be entitled to any benefits under this part in respect of service in the

uniformed services to which the member would not otherwise have been entitled had the member remained continuously employed and not undertaken such service in the uniformed services.

(b) For purposes of calculating benefits, a member who returns to employment with the same employer which had employed the member immediately prior to the eligible period of service in the uniformed services shall be entitled to service credit under this part for the eligible period of service in the uniformed services upon his or her payment of the member contributions required under Section 22901 that otherwise would have been due for such period of service had the member remained continuously employed and not undertaken such service in the uniformed services. No such payment of member contributions may exceed the amount the member would have been required to contribute under this part had the member not served in the uniformed services and had remained continuously employed by the employer throughout the eligible period of service in the uniformed services. If a member fails to remit the member contributions that would have been required under Section 22901 in respect of the eligible period of service in the uniformed services no service credit shall be provided under this part for the period to which the omitted contributions relate.

(c) Any payment of member contributions to the Defined Benefit Program in this section shall be made by the member during the period beginning with the date of return to employment and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years. Any payment of member contributions to the Defined Benefit Program in this section by a member who returned to employment prior to January 1, 1997, and qualifies for benefits in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code), shall be made by the member during the period beginning with the date of notification of eligibility by the employer to the system and may continue for three times the period of the member's eligible service in the uniformed services, not to exceed five years. Any subsequent request to purchase this service shall be subject to the provisions of Chapter 14 (commencing with Section 22800). If all contributions due under this part are not paid to the plan with respect to the Defined Benefit Program within the specified repayment period and in accordance with subdivision (b) of Section 22851 the contributions shall be returned to the member at the end of the repayment period. Interest on member contributions made for the eligible period of service in the uniformed services shall not be credited under this part until after the contributions due are paid and then only prospectively to the member's account in accordance with Section 22216.

SEC. 103. Section 22852 of the Education Code is amended to read:

22852. (a) An employer reemploying a member of the Defined Benefit Program with service subject to the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code shall be liable to the plan for the employer contributions under this part provided that employer was the last employer employing the member immediately prior to the period served by the member in the uniformed services.

(b) For purposes of determining the amount of that liability under this part and any obligation to the plan with respect to the Defined Benefit Program, interest shall not be included in the liability to the plan.

(c) Subject to subdivision (e), the employer shall pay the employer contributions for the eligible period of service in the uniformed services, that would have been required under Sections 22950 and 22951 had the member remained continuously employed during that period of eligible service in the uniformed services.

(d) The employer shall not be liable for employer contributions under this part for the eligible period of service in the uniformed services to the extent that the member fails to remit the member contributions for such period.

(e) The employer shall provide information regarding the reemployment of a member who is subject to Chapter 43 (commencing with Section 4301) of Title 38 of the United State Codes on a form prescribed by the system within 30 days of the date of reemployment.

(f) Employers shall remit to the plan with respect to the Defined Benefit Program the employer contributions required under subdivision (c) within 60 working days of the date the system notifies the employer of the amount of contributions due with respect to the member who elects to remit the member contributions for the eligible period of service in the uniformed services.

(g) If the employee does not comply with subdivision (b) of Section 22851 within the time period specified, the employer contributions that were remitted for that period shall be adjusted pursuant to Section 23008.

SEC. 104. Section 22853 of the Education Code is amended to read:

22853. For purposes of computing an employer's contributions for the eligible period of service or the member's contributions under this part, the employee's compensation earnable during the period shall be computed as follows:

(a) The compensation earnable the member would have received for the eligible period of service.

(b) In the event the compensation earnable is not reasonably certain, the employer's contributions and member's contributions shall be based on the member's average compensation earnable during the 12-month period immediately preceding the eligible

period of service in the uniformed services or, if shorter, the period of employment immediately preceding that period of service.

SEC. 105. Section 22854 of the Education Code is amended to read:

22854. A reemployed member who has been absent from a position of employment subject to coverage under the Defined Benefit Program to perform service in the uniformed services, pursuant to Section 22850, for a period in excess of five years shall not be entitled to service credit or credit for plan vesting purposes under this part, except where the service in the uniformed services has exceeded five years for the following reasons:

(a) The member is required to serve beyond five years to complete an initial period of obligated service.

(b) The member was unable to obtain orders releasing the member from a period of service in the uniformed services before the expiration of the five-year period and that inability was through no fault of the member.

(c) The member served in the uniformed services as required pursuant to Section 270 of Title 10 of the United States Code, Section 502(a) or 503 of Title 32 of the United States Code, or to fulfill additional training requirements determined and certified in writing by the Secretary of Defense, to be necessary for professional development, or for completion of skill training or retraining.

(d) The member is ordered to do any of the following:

(1) Ordered to or retained on active duty under Section 672(a), 672(g), 673, 673(b), 673(c), or 688 of Title 10 of the United States Code or under Section 331, 332, 359, 360, 367, or 712 of Title 14 of the United States Code.

(2) Ordered to or retained on active duty, other than for training, under any provision of law during a war or during a national emergency declared by the President or the Congress.

(3) Ordered to active duty, other than for training, in support, as determined by the secretary concerned, of an operational mission for which personnel have been ordered to active duty under Section 673(b) of Title 10 of the United Stated Code.

(4) Ordered to active duty in support, as determined by the secretary concerned, of a critical mission or requirement of the uniformed services.

(5) Called into federal service as a member of the National Guard under Chapter 15 (commencing with Section 331) of Title 10 of the United States Code or under Section 3500 or 8500 of Title 10 of the United States Code.

SEC. 106. Section 22855 of the Education Code is amended to read:

22855. A member of the Defined Benefit Program shall have no right to the benefits under this part otherwise accorded under this chapter in respect of service in the uniformed services upon the occurrence of any of the following events:

(a) A separation of the member from the uniformed service with a dishonorable or bad conduct discharge.

(b) A separation of the member from the uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the secretary concerned.

(c) A dismissal of the member permitted under Section 1161(a) of Title 10 of the United States Code.

(d) A dropping of the member from the rolls pursuant to Section 1161(b) of Title 10 of the United States Code.

SEC. 107. Section 22856 of the Education Code is amended to read:

22856. No provision of this chapter shall apply to the extent it would require any action to be taken that would cause the plan or its members under this part to incur adverse tax consequences under the Internal Revenue Code of 1986 (Title 26 of the United States Code).

SEC. 108. Section 22900 of the Education Code is amended to read:

22900. Acceptance of employment to perform creditable service subject to coverage under the Defined Benefit Program is consent to have contributions deducted from compensation.

SEC. 109. Section 22901 of the Education Code is amended to read:

22901. Each member of the Defined Benefit Program shall contribute to the retirement fund an amount equivalent to 8 percent of the member's creditable compensation.

SEC. 110. Section 22902 of the Education Code is amended to read:

22902. Members' accumulated retirement contributions and those other contributions required for credited service under this part shall be in the amounts required based on rates of contribution applicable for the years included in that period.

SEC. 111. Section 22903 of the Education Code is amended to read:

22903. Notwithstanding Sections 22901, 22956, and 23000, each school district, community college district, county board of education, and county superintendent of schools, may pick up, for the sole purpose of deferring taxes, as authorized by Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 414(h)(2)) and Section 17501 of the Revenue and Taxation Code, all of the contributions required to be paid under this part by a member of the Defined Benefit Program, provided that the contributions are deducted from the creditable compensation of the member.

SEC. 112. Section 22904 of the Education Code is amended to read:

22904. Notwithstanding any other provision of law, the state may pick up all or a portion of the contributions required to be paid under this part by a state employee who is a member of the Defined Benefit

Program, provided that the contributions are deducted from the creditable compensation of the member. The pickup of member contributions shall be through a salary reduction program pursuant to Section 414(h)(2) of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 414(h)(2)). These contributions shall be reported as employer-paid member contributions, and shall be credited to the account of the member.

SEC. 113. Section 22906 of the Education Code is amended to read:

22906. If at the time of retirement, disability, or death, there are contributions remaining to the credit of the member that were made with respect to time on the basis of which a benefit will not be payable under this part, the board shall refund the contributions as it may allocate to the time.

SEC. 114. Section 22907 of the Education Code is amended to read:

22907. Accumulated retirement contributions credited under this part to the account of a member whose date of birth is changed in the records of the system after December 31, 1979, shall be adjusted to the proper amount based on the correct birth date by either of the following methods:

(a) A refund of the excess contributions plus credited interest from the end of the school year in which contributions were overpaid because of the incorrect birth date.

(b) Payment by the member of the contributions due to the plan under this part plus regular interest from the end of the school year in which the contributions were underpaid to the date of payment.

SEC. 115. Section 22950 of the Education Code is amended to read:

22950. Employers shall contribute monthly to the Teachers' Retirement Fund 8 percent of the creditable compensation upon which members' contributions under this part are based.

SEC. 116. Section 22951 of the Education Code is amended to read:

22951. In addition to any other contributions required by this part, employers shall contribute monthly to the Teachers' Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions under this part are based.

SEC. 117. Section 22951.5 of the Education Code is amended to read:

22951.5. In addition to any other contributions required by this part, if the board determines that the Supplemental Benefit Maintenance Account will not have sufficient funds to make the maximum payment under this part pursuant to Section 24417, the board may increase the employer contribution rate as provided in Section 24416.

SEC. 118. Section 22952 of the Education Code is amended to read:

22952. (a) Effective January 1, 1980, in addition to all other contributions required by this part, on account of liability for benefits pursuant to Section 24407, employers shall contribute monthly to the Teachers' Retirement Fund 0.307 percent of the creditable compensation upon which members' contributions under this part are based.

(b) The Controller shall adjust the contributions required by this section within 10 days of notification by the board of the actual creditable compensation on which the contributions are based. A copy of the notification shall be transmitted to the Legislature, the Director of Finance, the Office of the Legislative Analyst, and the Commission on State Mandates. The payroll data shall be subject to audit by the Controller pursuant to Section 17558.5 of the Government Code.

SEC. 119. Section 22954 of the Education Code is amended to read:

22954. (a) In addition to any other contributions required by this part, on July 1, 1990, and on July 1 of each subsequent year, the Controller, subject to Section 24414, shall transfer, based on estimated payroll data provided by the board, the following percentages of the total of the prior year creditable compensation upon which members' contributions under this part are based to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund, for the purpose of funding the supplemental payments authorized under Section 24415:

(1) For the fiscal year ending June 30, 1991	0.50%
(2) For the fiscal year ending June 30, 1992	1.00%
(3) For the fiscal year ending June 30, 1993	1.50%
(4) For the fiscal year ending June 30, 1994	2.00%
(5) For the fiscal year ending June 30, 1995, and each fiscal year thereafter	2.50%

These transfers shall be based upon estimated payroll data provided to the Director of Finance by the board and shall be adjusted in January of that same fiscal year to reflect actual payroll data.

(b) The board may deduct from the annual state contributions made pursuant to this section an amount necessary for the administrative expenses to implement Section 24415, subject to the annual Budget Act.

(c) Notwithstanding any other provision of law, it is the intent of the Legislature, in establishing the Supplemental Benefit Maintenance Program embodied in this section and Sections 22400, 24414, and 24415, to manifest a contractually enforceable promise to repay the Teachers' Retirement Fund in full, with interest, as provided in subdivision (b) of Section 24414, for all transfers or

advances made from the Teachers' Retirement Fund pursuant to subdivision (a) of Section 24414 and for any funds appropriated by Item No. 1920-111-835 of the Budget Act of 1989 from the Teachers' Retirement Fund to provide purchasing power protection payments.

(d) Except as provided in subdivision (c), the Legislature reserves the right to reduce or terminate the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section and to reduce or terminate the distributions required by Section 24415. It is intended that any legislative reduction or termination of the state's contributions to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund provided by this section or any reduction or termination of distributions required by Section 24415, shall be effectuated by a separate statute rather than by the annual Budget Act.

SEC. 120. Section 22956 of the Education Code is amended to read:

22956. Employer and state contributions made to the plan under this part are to finance the employer obligation for all members of the Defined Benefit Program and, therefore, shall not be credited to the individual member accounts. These contributions shall be held in the reserves of the plan to finance the employers' share of the cost of all benefits payable under the plan with respect to the Defined Benefit Program. Under no circumstances shall employer contributions be allocated or awarded to individual members, their spouses, or beneficiaries.

SEC. 121. Section 23003 of the Education Code is amended to read:

23003. (a) If a county superintendent of schools or employing agency other than a school district or community college district fails to make payment of contributions as provided in Section 23002, the board may assess penalties.

(b) The board may charge regular interest on any delinquent contributions under this part until the contributions have been received by the system.

SEC. 122. Section 23005 of the Education Code is amended to read:

23005. Monthly reports are due in the office of the system 30 calendar days immediately following the month in which the compensation being reported under this part was earned, and are delinquent 15 calendar days immediately thereafter.

SEC. 123. Section 23006 of the Education Code is amended to read:

23006. (a) If a county superintendent of schools or employing agency other than a school district or community college district submits monthly reports late or in unacceptable form, the board may assess penalties.

(b) The board may assess penalties, based on the sum of the employer and employee contributions required under this part by the report for late or unacceptable submission of reports, at a rate of interest equal to the regular interest rate or a fee of five hundred dollars ($500), whichever is greater.

SEC. 124. Section 23101 of the Education Code is amended to read:

23101. When a member's accumulated retirement contributions are refunded, as provided in Section 23100, all rights to benefits pertaining to the service credit represented by those contributions under this part are forfeited. Those rights and benefits, based upon service performed prior to refund, shall not be restored until the member has redeposited the total of the refunded accumulated retirement contributions, and paid the regular interest thereon as provided in Chapter 19 (commencing with Section 23200).

SEC. 125. Section 23102 of the Education Code is amended to read:

23102. Prior to the system paying a refund of accumulated retirement contributions under this part, the employer shall certify that the member's employment has been terminated.

SEC. 126. Section 23103 of the Education Code is amended to read:

23103. Refunds to a member shall be made upon request of the member, or may be made without a request if it appears to the board that the member's employment is permanently terminated and the member does not have enough credited service under the Defined Benefit Program to qualify for service retirement under this part.

SEC. 127. Section 23104 of the Education Code is amended to read:

23104. (a) Deposit in the United States mail of an initial warrant drawn as directed by the member as a refund of contributions upon termination of employment, and addressed to the address directed by the member, constitutes a return of the member's accumulated retirement contributions under this part.

(b) If the member has elected on a form provided by the system to transfer all or a specified portion of the accumulated retirement contributions that are eligible for direct trustee-to-trustee transfer to the trustee of a qualified plan under Section 402 of the Internal Revenue Code of 1986 (26 U.S.C.A. Sec. 402), deposit in the United States mail of a notice that the requested transfer has been made constitutes a return of the member's accumulated retirement contributions under this part.

(c) For refunds not involving direct trustee-to-trustee transfers, if the member returns the total gross distribution amount to the system's office in Sacramento within 30 days from the mailing date, the refund shall be canceled and the person shall be restored as a member of the Defined Benefit Program with all the rights and privileges under this part restored.

(d) For refunds involving direct trustee-to-trustee transfers, if the member returns the warrant drawn to the trustee of the qualified plan and, if applicable, any additional amounts necessary to equal, but in no event to exceed, the total gross distribution amount to the system's office in Sacramento within 30 days from the mailing date, the refund shall be canceled and the person shall be restored as a member of the Defined Benefit Program with all the rights and privileges under this part restored.

SEC. 128. Section 23106 of the Education Code is amended to read:

23106. If a member ceases to be entitled to credit for service in the Defined Benefit Program because the member has become entitled to credit for that service in another retirement system supported wholly or in part by funds of the United States government, or any state government or political subdivision thereof, the member is entitled to a refund of the accumulated retirement contributions made during the period for which he or she is entitled to credit in the other retirement system.

SEC. 129. Section 23107 of the Education Code is amended to read:

23107. Any member of the Defined Benefit Program without terminating membership in the program and upon making application on forms provided by the system shall be paid a refund of the accumulated annuity deposit contributions under this part.

SEC. 130. Section 23200 of the Education Code is amended to read:

23200. (a) If a person, whose accumulated retirement contributions have been refunded, again becomes a member of the Defined Benefit Program, the person may elect to redeposit those contributions with regular interest from the date of refund to the date of payment. If the member elects to redeposit, the member shall repay all accumulated retirement contributions that were previously refunded under this part.

(b) For time prior to July 1, 1944, regular interest shall be at $2\frac{1}{2}$ percent compounded annually.

(c) If a nonmember spouse, as defined in Section 22651, withdraws accumulated contributions in accordance with Section 22661, the member may redeposit a sum equal to those contributions pursuant to subdivision (a), providing he or she is not receiving an allowance under Chapter 26 (commencing with Section 24100) or Chapter 27 (commencing with Section 24201).

SEC. 131. Section 23202 of the Education Code is amended to read:

23202. (a) An election pursuant to Section 23200 to redeposit accumulated retirement contributions may be made by a member anytime prior to the effective date of the member's retirement under this part.

(b) An election to redeposit refunded accumulated retirement contributions shall be considered as an election to repay all accumulated retirement contributions previously refunded under the provision of this chapter.

(c) If any payment due because of this election is not received at the system's office in Sacramento within 120 days of its due date, the election shall be canceled. Upon the cancellation of election any payments made under the election shall be refunded.

(d) If the election is canceled, the member may at any time prior to the effective date of retirement under this part, again elect to redeposit accumulated retirement contributions previously withdrawn or refunded, in accordance with Section 23200 and all the laws, rules, and regulations pertaining thereto.

SEC. 132. Section 23203 of the Education Code is amended to read:

23203. Redeposit of refunded accumulated retirement contributions under this part shall be made in one sum, or in not more than 60 monthly installments, provided that no installment, except the final installment, shall be less than twenty-five dollars ($25).

SEC. 132.5. Section 23203 of the Education Code is amended to read:

23203. Redeposit of refunded accumulated retirement contributions under this part shall be made in one sum, or in not more than 120 monthly installments, provided that no installment, except the final installment, shall be less than twenty-five dollars ($25).

SEC. 133. Section 23300 of the Education Code is amended to read:

23300. (a) A member of the Defined Benefit Program may at any time designate a beneficiary, or change the designation of a beneficiary, to receive benefits payable under this part, except that no beneficiary designation may be made in derogation of the community property share of any nonmember spouse under this part when any such benefit is derived, in whole or in part, from community property contributions or service credited during the period of marriage, unless the nonmember spouse has previously obtained an alternative order for distribution pursuant to Section 2610 of the Family Code. A designation of beneficiary shall be in writing on a form prescribed by the system, executed by the member, witnessed by two witnesses, neither of whom may be beneficiaries. To be valid the instrument shall be received in the office of the system in Sacramento before the member's death.

(b) Except as otherwise stated in this section, the designation of beneficiary, other than an option beneficiary, may be revoked by the member making the designation, and a different beneficiary designated in the same manner as provided in this section.

SEC. 134. Section 23301 of the Education Code is amended to read:

23301. A corporation, trust, eleemosynary, parochial institution, or public entity may be designated as a beneficiary under this part. However, they may not be designated as option beneficiaries.

SEC. 135. Section 23302 of the Education Code is amended to read:

23302. Payment under this part to a beneficiary designated in the form on file in the system at the date of death by a warrant drawn prior to any claim under community property rights shall constitute full discharge of any and all liability of the board, system, and plan by reason of the member's death.

SEC. 136. Section 23303 of the Education Code is amended to read:

23303. (a) If the whereabouts of the designated beneficiary cannot be determined, or if the beneficiary is the estate of the deceased person, the board may pay to the undertaker who conducted the funeral, or to any person who, or any organization that, has paid the undertaker from funds owned by the person or organization, in its discretion all or a portion of any amount payable under this part, but not to exceed the funeral expenses of the deceased person, or the portion of the expenses paid by the person or organization, as evidenced by the sworn itemized statement of the undertaker, person, or organization and by any other documents the board may require.

(b) The payment shall be in full and complete discharge and acquittance of the board, system, and plan up to the amount paid.

SEC. 137. Section 23304 of the Education Code is amended to read:

23304. If no beneficiary designation is in effect on the date of death, any benefit payable under this part shall be paid to the estate of the member. Payment pursuant to the board's determination in good faith upon evidence satisfactory to it of the existence, identity or other facts relating to entitlement of persons under this section shall constitute a complete discharge and release of the system and plan from liability for the benefit.

SEC. 138. Section 23700 of the Education Code is amended to read:

23700. (a) New survivor benefit and disability retirement programs that are provided under the Defined Benefit Program pursuant to Chapter 23 (commencing with Section 23850) and Chapter 26 (commencing with Section 24100), are effective as of October 16, 1992. All members of the Defined Benefit Program with an effective date of membership in the program on or after October 16, 1992, shall be covered by these survivor benefit and disability retirement programs under this part.

(b) The purpose of this chapter is to set forth the criteria for granting certain members of the Defined Benefit Program, as defined in Section 23702, the opportunity to elect to either retain coverage under the current family allowance and disability

allowance programs pursuant to Chapter 22 (commencing with Section 23800), and Chapter 25 (commencing with Section 24001) or to be covered under the survivor benefit and disability retirement programs.

SEC. 139. Section 23800 of the Education Code is amended to read:

23800. (a) This chapter governs the eligibility, benefit provisions, allowance computations, and related provisions for the death benefits payable under this part upon the death of eligible members. "Members," as used in this chapter, means all members who were receiving a disability allowance on October 15, 1992, and all persons who were members of the plan under this part on October 15, 1992, who were not receiving an allowance and who did not elect, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered under Chapter 23 (commencing with Section 23850).

(b) This chapter also contains three sections related to survivor benefits payable on account of deaths that occurred prior to July 1, 1972.

SEC. 140. Section 23801 of the Education Code is amended to read:

23801. (a) A death payment of no less than five thousand dollars ($5,000) shall be paid to the beneficiary upon receipt of proof of death of a member who had one or more years of credited service, at least one of which had been performed subsequent to the most recent refund of accumulated retirement contributions, if the member died during any one of the following periods:

(1) While in employment for which compensation is paid.

(2) While disabled, if the disability had been continuous from the last day for which compensation had been paid.

(3) Within four months after termination of service or termination of employment, whichever occurs first.

(4) Within four months after termination of a disability allowance if no service was performed after the termination.

(5) Within 12 months of the last day for which compensation was paid, if the member was on an approved leave of absence without compensation for reasons other than disability or military service.

(b) A death payment pursuant to this section shall not be payable for the death of a member that occurs within one year commencing with the effective date of reinstatement from service retirement pursuant to Section 24208.

(c) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index and adopt any adjusted amount as a plan amendment.

(d) A beneficiary may waive his or her right to the death payment in accordance with the requirements established by the system.

SEC. 140.5. Section 23805 of the Education Code is amended to read:

23805. A family allowance is payable in the amount and to the specified persons in the following order of priority:

(a) To the deceased member's surviving spouse who has financial responsibility for at least one dependent child, an amount equal to 40 percent of the member's final compensation or the disabled member's projected final compensation plus 10 percent of the member's final compensation or the disabled member's projected final compensation for each child, up to a maximum allowance of 90 percent.

(b) If there is no surviving spouse or upon the death of the surviving spouse, to each dependent child, an amount equal to 10 percent of the deceased member's final compensation or the disabled member's projected final compensation, up to a maximum allowance of 50 percent. If there are more than five dependent children, they shall share equally in the maximum allowance of 50 percent.

(c) To the surviving spouse at age 60 years or over if there is no dependent child, an allowance equal to the amount that would have been payable to the spouse as beneficiary under Option 3 as provided in Section 24300, computed on the member's projected final compensation and projected service to normal retirement age. The allowance payable under this subdivision shall be increased by application of the benefit improvement factor for time that elapses between the date the member would have attained normal retirement age and the date the family allowance under this subdivision begins to accrue. The allowance calculation shall include service credit for the unused sick leave that had accrued to the member as of the date of his or her death. Eligibility for the inclusion of service credit for unused sick leave credit and the calculation of that service credit shall be determined pursuant to Section 22717.

(d) If there is neither surviving spouse nor dependent child, to the dependent parent, age 60 years or over, an allowance equal to the amount that would have been payable to the dependent parent as beneficiary under Option 3 as provided in Section 24300 computed on the member's projected final compensation and projected service to normal retirement age. The allowance calculation shall include service credit for the unused sick leave that had accrued to the member as of the date of his or her death. Eligibility for the inclusion of service credit for unused sick leave and the calculation of that service credit shall be determined pursuant to Section 22717. If there are two dependent parents, only one family allowance shall be payable under this subdivision and that allowance shall be computed on the assumption that the younger parent is the option beneficiary and the allowance shall be divided equally for as long as there are two dependent parents. Thereafter, the full allowance shall be payable to the surviving dependent parent.

(e) The surviving spouse or dependent parent may elect to begin receiving the family allowance payable under subdivision (c) or (d) immediately upon the later of the death of the member or when

there is no dependent child, or to defer receipt of the allowance to the date the surviving spouse or dependent parent attains age 60 years. If allowance payments commence prior to the date the surviving spouse or dependent parent attains age 60 years, the allowance payable shall be actuarially reduced.

(f) If there is no dependent child, a surviving spouse or dependent parent or parents may elect, prior to receipt of the first payment under subdivision (c) or (d), to receive the member's accumulated retirement contributions in a lump sum subject to a reduction for any disability allowance or family allowance payments previously made.

SEC. 141. Section 23850 of the Education Code is amended to read:

23850. This chapter governs the eligibility, benefit provisions, allowance computations, and related provisions for the death benefits payable under this part upon the death of eligible members. "Member," as used in this chapter, means all persons who become members of the plan under this part on or after October 16, 1992, and all persons who were members as of October 15, 1992, who elected, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered under the death benefit provisions of this chapter.

SEC. 142. Section 23851 of the Education Code is amended to read:

23851. (a) A death payment of no less than twenty thousand dollars ($20,000) shall be paid to the beneficiary, as designated pursuant to Section 23300, upon receipt of proof of death of an active member, who had one or more years of credited service, at least one of which had been performed subsequent to the most recent refund of accumulated retirement contributions, if the member died during any one of the following periods:

(1) While in employment for which compensation is paid.

(2) Within four months after termination of service or termination of employment, whichever occurs first.

(3) Within 12 months of the last day for which compensation was paid, if the member was on an approved leave of absence without compensation for reasons other than disability or military service.

(b) A death payment pursuant to this section shall not be payable for the death of a member that occurs within one year commencing with the effective date of termination of the service retirement allowance pursuant to Section 24208 or during the six calendar months commencing with the effective date of termination of the disability retirement allowance pursuant to Section 24117.

(c) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index and adopt as a plan amendment any adjusted amount.

(d) A designated beneficiary may waive his or her right to the death payment in accordance with the requirements established by the system.

SEC. 143. Section 23880 of the Education Code is amended to read:

23880. (a) A death payment of not less than five thousand dollars ($5,000) shall be paid to the beneficiary, as designated pursuant to Section 23300, upon receipt of proof of death of either of the following:

(1) A retired member.

(2) A member, if the death payment pursuant to Section 23801 would have otherwise been payable or if the conditions specified pursuant to paragraphs (3) and (5) of subdivision (b) of Section 23854 are met, and if the member's death occurs during one of the following periods:

(A) Within one year commencing with the effective date of reinstatement from service retirement pursuant to Section 24208.

(B) Within six months commencing with the effective date of reinstatement from disability retirement pursuant to Section 24117.

(b) The board may adjust the death payment amount following each actuarial valuation based on changes in the All Urban California Consumer Price Index and adopt as a plan amendment any adjusted amount.

SEC. 144. Section 23881 of the Education Code is amended to read:

23881. (a) Upon receipt of proof of death of a retired member who retired under this part after June 30, 1972, and of the retired member's option beneficiary, if the total retirement allowance paid or payable is less than the amount of the member's accumulated retirement contributions at the time of retirement, the remaining balance of accumulated retirement contributions shall be paid to the beneficiary, if no option was elected, or to the estate of the option beneficiary, if an option was elected.

(b) Payments provided under this section shall include credited interest on the unpaid balance calculated from the date the last allowance payment was made to the date the balance is paid.

SEC. 145. Section 24001 of the Education Code is amended to read:

24001. (a) A member may apply for a disability allowance under the Defined Benefit Program if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual performance of service subject to coverage under the Defined Benefit Program. Credit received because of workers' compensation payments shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service were performed in this state.

(3) At least one year was credited for service performed subsequent to the date on which the member terminated the service retirement allowance under Section 24208.

(4) At least one year was credited for service performed subsequent to the most recent refund of accumulated retirement contributions.

(5) The member has neither attained normal retirement age, nor possesses sufficient unused sick leave days to receive creditable compensation on account of sick leave to normal retirement age.

(6) The member is not applying for a disability allowance because of a physical or mental condition known to exist at the time the most recent membership in the Defined Benefit Program commenced and remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) shall affect the right of a member to a disability allowance under this part if the reason that the member is credited with less than four years of actual service performed subject to coverage under the Defined Benefit Program is due to an on-the-job injury or a disease that occurred while the member was employed and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) or Chapter 14.5 (commencing with Section 22850) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member under this part who has less than five years of credited service to a disability allowance providing the member has at least one year of credited California service and if the reason for the disability is due to an unlawful act of bodily harm committed by another human being on the person of the member while the member was performing his or her official duties in a position subject to coverage under the Defined Benefit Program.

(d) A member shall not be eligible for disability under the Defined Benefit Program while on a leave of absence to serve as a full-time elected officer of an employee organization, even if receiving service credit under Section 22711.

SEC. 146. Section 24001.5 of the Education Code is amended to read:

24001.5. A member shall not be eligible for disability under the Defined Benefit Program while on a leave of absence to serve as a full-time elected officer of an employee organization, even if receiving service credit under Section 22711.

SEC. 147. Section 24002 of the Education Code is amended to read:

24002. The board may authorize payment of a disability allowance to any member who is qualified upon application under this part by the member, the member's guardian or conservator, or the member's employer, if the application is made during any one of the following periods:

(a) While the member is employed or on a compensated leave of absence.

(b) While the member is physically or mentally incapacitated for performance of service and the incapacity has been continuous from

the last day of service for which compensation is payable to the member.

(c) While the member is on a leave of absence without compensation, granted for reason other than mental or physical incapacity for performance of service, and within four months after the last day of service for which compensation is payable to the member, or within 12 months of that date if the member is on an employer-approved leave to study at an approved college or university.

(d) Within four months after the termination of the member's employment subject to coverage under the Defined Benefit Program, if the application was not made under subdivision (b) and was not made more than four months after the last day of service for which compensation is payable to the member.

(e) A member with a dependent child who becomes disabled prior to normal retirement age, and whose sick leave will extend beyond normal retirement age, may be awarded a disability allowance with an effective date after normal retirement age, if application is filed prior to attaining normal retirement age.

(f) The member is not applying for a disability allowance because of a physical or mental condition that existed at the time the most recent membership in the Defined Benefit Program commenced and which remains substantially unchanged at the time of application.

SEC. 148. Section 24003 of the Education Code is amended to read:

24003. (a) The member shall provide medical documentation to substantiate the impairment qualifying the member for the disability allowance.

(b) On receipt of an application for disability allowance under this part, the system may order a medical examination of a member to determine whether the member is incapacitated for performance of service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability allowance shall be rejected. The member shall either remain in this state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations, or the application shall be rejected, unless this requirement is waived by the board. If the member is too ill to be examined, the system shall postpone the examination until the member can be examined. The member or the member's treating physician shall inform the system, in writing, when the medical examination can be rescheduled.

(c) The system may reject the disability allowance application under this part if the member fails to provide requested medical documentation to substantiate a disability, as defined in Section 22126, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is mentally or physically incapacitated.

(d) If the board determines that a member who has applied for a disability allowance under this part may perform service in the member's former position of employment or in a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability allowance application.

(e) If the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability allowance under this part.

(f) The system shall inform the member of the rejection or cancellation of the member's disability allowance application under this part within 30 days after that determination is made by the system.

SEC. 149. Section 24004 of the Education Code is amended to read:

24004. In cases of a member's willful substance abuse or if the board determines a member who qualifies for a disability allowance pursuant to Section 24001 has mental, physical, or vocational rehabilitation potential, the board may limit the disability allowance under this part to a period not to exceed two years from the date of approval of the disability allowance. Notwithstanding Section 24013, the disability allowance shall terminate at the end of the period granted unless an extension is granted by the board.

SEC. 150. Section 24005 of the Education Code is amended to read:

24005. (a) A disability allowance under this part shall become effective upon any date designated by the member, provided all of the following conditions are met:

(1) An application for disability allowance is filed on a form provided by the system.

(2) The effective date is later than the last day of creditable service for which compensation is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received by the system's office in Sacramento, or the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(b) If the member is employed to perform creditable service subject to coverage under the Defined Benefit Program at the time the disability allowance is approved under this part, the member shall notify the system in writing, within 90 days, of the last day on which the member will perform service. If the member does not respond within 90 days, or if the last day on which service will be performed is more than 90 days after the date the system notifies the member of approval of the disability allowance, the member's application for a disability allowance shall be rejected and a disability allowance shall not be payable to the member.

SEC. 151. Section 24006 of the Education Code is amended to read:

24006. Upon qualification for disability under this part, a member shall receive an annual allowance equal to 50 percent of final compensation payable in monthly installments. The allowance shall be increased by 10 percent of final compensation for each dependent child, to a maximum of four dependent children.

SEC. 152. Section 24010 of the Education Code is amended to read:

24010. Allowances payable under Sections 24006 and 24007 shall be reduced by an amount equal to the unmodified benefits paid or payable under other public systems for the same impairment or impairments that qualify the member for a disability allowance under this part.

SEC. 153. Section 24011 of the Education Code is amended to read:

24011. A member who qualifies for disability allowance pursuant to this chapter because of a disabling impairment that is amenable to treatment that could be expected to restore the member's ability to perform service in the member's former position of employment or a comparable level position shall participate in a treatment program prescribed by the member's primary treating physician. Willful failure to initiate and continue participation in the treatment program shall cause the disability allowance to be terminated. In determining whether a member has good cause for failure to follow the treatment program, the board shall take into account whether treatment would abridge the member's right to the free exercise of religion or whether the member's physical or mental condition has worsened, as determined by the member's treating physician and substantiated by medical evidence.

SEC. 154. Section 24013 of the Education Code is amended to read:

24013. The board may require any member receiving a disability allowance under this part to undergo medical examination at such times as the board deems necessary. The system may request the member's treating physician, upon authorization by the disabled member, to complete a medical reevaluation questionnaire. The system shall reimburse the disabled member for all reasonable costs

related to completion of this questionnaire in an amount not to exceed two hundred fifty dollars ($250) if the disabled member has no other health coverage that would pay the costs of completing the medical questionnaire. The board may authorize a medical examination to be conducted by the disabled member's treating source at the disabled member's expense and, in any case, may require a medical examination to be conducted by a physician selected by the board, in which event, the board shall pay all reasonable costs associated with the examination. The board shall, in scheduling medical examinations, give consideration to the interests and convenience of the disabled member. If the examination, together with other available information, shows to the satisfaction of the board that the member is no longer disabled, the disability allowance shall be terminated. Should the disabled member refuse to submit to medical examination, as provided in this section, the disability allowance shall be terminated and all rights of the disabled member to the disability allowance shall be revoked.

SEC. 155. Section 24014 of the Education Code is amended to read:

24014. A disabled member may be employed to perform creditable service subject to coverage under the Defined Benefit Program. The employment shall not cause the disability allowance to be suspended or terminated except as provided in Sections 23401, 24013, and 24015, and no deduction shall be made from the disabled member's compensation as contributions to the Defined Benefit Program.

SEC. 156. Section 24015 of the Education Code is amended to read:

24015. Notwithstanding Section 22132, if a person who begins to receive a disability allowance under this part after June 30, 1972, is employed, or is self-employed in any capacity in which his or her average earnings for any prior continuous six months amount to 66 $^2/_3$ percent of the indexed final compensation, the person shall be presumed capable of performing gainful employment and no longer disabled. The disability allowance shall be terminated on the first day of the month following the six-month period. Any allowance paid thereafter shall be considered an overpayment and recovery shall be made.

SEC. 157. Section 24016 of the Education Code is amended to read:

24016. (a) For any one or more months in which the total of a disabled member's allowance under this part, excluding children's portions, and earnings exceed 100 percent of indexed final compensation, 100 percent of the amount in excess shall be considered an overpayment and recovery shall be made.

(b) This action shall not apply to disabled members who have allowances terminated under Section 24015 or who are enrolled in an approved rehabilitation program.

SEC. 158. Section 24017 of the Education Code is amended to read:

24017. If a person who began receiving a disability allowance under this part after June 30, 1972, is enrolled in an approved rehabilitation program and the total of the disability allowance, excluding children's portions, and earnings exceed 100 percent of indexed final compensation, 50 percent of the amount in excess shall be considered an overpayment and recovery shall be made.

SEC. 159. Section 24018 of the Education Code is amended to read:

24018. When a disabled member returns to work in his or her former position of employment or in a comparable level position and within six months of return experiences a recurrence of the original disability, that can be medically substantiated, it shall be considered, for the purpose of determining the duration of the disability, that the condition had its onset as of the date the member first became disabled. The former disability allowance under this part shall again become payable as of the later of the first day of the month in which the recurrence of the disability occurred or the last day of service for which compensation is payable to the member provided the member complies with the provisions of Section 24003.

SEC. 160. Section 24100 of the Education Code is amended to read:

24100. This chapter governs the eligibility, allowance computations, and related provisions for the disability retirement program. This chapter applies to all persons who become members of the plan under this part on and after October 16, 1992, all persons who become members of the plan on and after October 16, 1992, subsequent to a refund, and to all members as of October 15, 1992, who elect under this part, pursuant to Chapter 21.5 (commencing with Section 23700), to be covered by the disability retirement program set forth in this chapter.

SEC. 161. Section 24101 of the Education Code is amended to read:

24101. (a) A member may apply for a disability retirement under this part if the member has five or more years of credited service and if all of the following requirements are met:

(1) At least four years were credited for actual service performed subject to coverage under the Defined Benefit Program. Credit received because of workers' compensation payments shall be counted toward the four-year requirement in accordance with Section 22710.

(2) The last five years of credited service were performed in this state.

(3) At least one year (1.000) of credited service was earned subsequent to the date on which the member terminated the service retirement allowance under Section 24208.

(4) At least one year (1.000) of credited service was earned subsequent to the date on which the member's disability allowance was terminated.

(5) At least one year (1.000) of credited service was earned subsequent to the most recent refund of accumulated retirement contributions.

(6) The member is not applying for a disability retirement because of a physical or mental condition known to exist at the time the most recent membership in the Defined Benefit Program commenced and that remains substantially unchanged at the time of application.

(b) Nothing in subdivision (a) shall affect the right of a member to a disability retirement if the reason that the member has performed less than four years of actual service is due to an on-the-job injury or a disease while in employment subject to coverage by the Defined Benefit Program and the four-year requirement can be satisfied by credit obtained under Chapter 14 (commencing with Section 22800) or Chapter 14.5 (commencing with Section 22850) in addition to any credit received from workers' compensation payments.

(c) Nothing in subdivision (a) shall affect the right of a member who has less than five years of credited service to a disability retirement allowance providing the member has at least one year of credited California service and if the reason for the disability is due to an unlawful act of bodily harm committed by another human being on the person of the member while the member was performing his or her official duties in a position subject to coverage under the Defined Benefit Program.

(d) A member shall not be eligible for disability retirement from the Defined Benefit Program while on a leave of absence to serve as a full-time elected officer of an employee organization, even if receiving service credit under Section 22711.

SEC. 163. Section 24102 of the Education Code is amended to read:

24102. The board may authorize payment of a disability retirement allowance under this part to any member who is qualified upon application by the member, the member's guardian or conservator, or the member's employer, if the application is made during any one of the following periods:

(a) While the member is employed or on a compensated leave of absence.

(b) While the member is physically or mentally incapacitated for performance of service and the incapacity has been continuous from the last day for which compensation is payable to the member.

(c) While the member is on a leave of absence without compensation, granted for reason other than mental or physical incapacity for performance of service, and within four months after the last day of service for which compensation is payable to the

member, or within 12 months of that date if the member was on an employer-approved leave to study at an approved college or university.

(d) Within four months after the termination of the member's employment subject to coverage under the Defined Benefit Program, if the application was not made under subdivision (b) and was not made more than four months after the last day of service for which compensation is payable to the member.

(e) The member is not applying for a disability retirement allowance because of a physical or mental condition that existed at the time the most recent membership in the Defined Benefit Program commenced and which remains substantially unchanged at the time of application.

SEC. 164. Section 24103 of the Education Code is amended to read:

24103. (a) The member shall provide medical documentation substantiating the impairment qualifying the member for the disability retirement under this part.

(b) On receipt of an application for disability retirement under this part, the system may order a medical examination of a member to determine whether the member is incapacitated for performance of service. The medical examination shall be conducted by a practicing physician, selected by the board, with expertise in the member's disability, and the board shall pay all costs associated with the examination. The board shall pay all other reasonable costs related to travel and meals in accordance with the rates set for state employees by the Department of Personnel Administration. If the member refuses to submit to the required medical examination, the application for disability retirement shall be rejected. The member shall either remain in this state, or return to this state at the member's own expense, to undergo the initial evaluations or examinations or the application shall be rejected, unless this requirement is waived by the board. If the member is too ill to be examined, the system shall postpone the examination until the member can be examined. The member or the member's treating physician shall inform the system, in writing, when the medical examination can be rescheduled.

(c) The system may reject the disability retirement application under this part if the member fails to provide requested medical documentation to substantiate a disability, as defined in Section 22126, within 45 days from the date of the request or within 30 days from the time that a legally designated representative is empowered to act on behalf of a member who is mentally or physically incapacitated.

(d) If the board determines that a member who has applied for disability retirement under this part may perform service in the member's former position of employment or in a comparable level position with the assistance of reasonable accommodation, the board may require the member to request reasonable accommodation from

the employer. Failure of the member to request reasonable accommodation, as directed by the board, may be grounds for cancellation of the disability retirement application under this part.

(e) If the employer fails or refuses to provide reasonable accommodation, the board may require the member to pursue an administrative appeal of the employer's denial as a condition for receiving a disability retirement allowance under this part.

(f) The system shall inform the member of the rejection or cancellation of the member's disability retirement allowance application under this part within 30 days after that determination is made by the system.

SEC. 165. Section 24104 of the Education Code is amended to read:

24104. In cases of a member's willful substance abuse or if the board determines a member who qualifies for disability retirement under this part pursuant to this chapter has mental, physical, or vocational rehabilitation potential, the board may limit the disability retirement to a period not to exceed two years from the date of approval of the disability retirement. Notwithstanding Section 24112, the disability retirement allowance shall terminate at the end of the period granted unless an extension is granted by the board.

SEC. 166. Section 24105 of the Education Code is amended to read:

24105. (a) A disability retirement allowance under this part shall become effective upon any date designated by the member, provided that all of the following conditions are met:

(1) An application for disability retirement is filed on a form provided by the system.

(2) The effective date is later than the last day of service for which compensation is payable to the member.

(3) The effective date is no earlier than either the first day of the month in which the application is received at the system's office in Sacramento, or the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

(b) If a member's application for disability retirement under this part does not contain an election of either an unmodified allowance or an allowance modified under an option and if the member subsequently submits an election, but not within the 30-day period established pursuant to Section 24301, the board shall set a benefit effective date which is no earlier than the first day of the month in which the subsequent election is received by the system. If the member fails to submit an election pursuant to Section 24301 and within six months of the date the acknowledgment notice is mailed pursuant to Section 24301, the member's application for disability retirement under this part shall be rejected.

(c) If the member is employed to perform creditable service subject to coverage under the Defined Benefit Program at the time

the disability retirement is approved, the member shall notify the system in writing, within 90 days, of the last day on which the member will perform service. If the member does not respond within 90 days, or if the last day on which service will be performed is more than 90 days after the date the system notifies the member of the approval of disability retirement, the member's application for disability retirement shall be rejected and a disability retirement allowance shall not be payable to the member.

SEC. 167. Section 24106 of the Education Code is amended to read:

24106. Upon retirement for disability pursuant to this chapter, a member under this part shall receive a retirement allowance that shall consist of all of the following:

(a) An annual allowance equal to 50 percent of final compensation payable in monthly installments.

(b) An additional 10 percent of final compensation for each dependent child, up to a maximum of 40 percent of final compensation. If there are more than four dependent children, they shall share equally in the maximum allowance of 40 percent. A dependent child may waive his or her right to his or her portion of the allowance in accordance with procedures established by the system.

(c) An annuity that shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account on the effective date of the disability retirement.

SEC. 168. Section 24107 of the Education Code is amended to read:

24107. A member retired for disability under this part may elect an option pursuant to Section 24301 to modify the disability retirement allowance payable pursuant to subdivision (a) of Section 24106.

SEC. 169. Section 24108 of the Education Code is amended to read:

24108. A retirement allowance payable pursuant to Section 24106 that includes a child's portion shall be reduced when a dependent child becomes ineligible. The reduction shall take into account the increases made by application of the improvement factor. However, the retired member's allowance under this part shall not be less than it could have been if there had never been a dependent child.

SEC. 170. Section 24109 of the Education Code is amended to read:

24109. Retirement allowances payable pursuant to subdivision (a) of Section 24106 shall be reduced by an amount equal to the unmodified benefits paid or payable under a workers' compensation program for the same impairment or impairments that qualify the member for a disability retirement allowance under this part.

SEC. 171. Section 24110 of the Education Code is amended to read:

24110. A member who qualifies for disability retirement under this part pursuant to this chapter because of a disabling impairment that is amenable to treatment that could be expected to restore the member's ability to perform service in the member's former position of employment or in a comparable level position shall participate in a treatment program prescribed by the member's primary treating physician. Willful failure to initiate and continue participation in the program shall cause the disability retirement allowance to be terminated. In determining whether a member has good cause for failure to follow that treatment, the board shall take into account whether the treatment would abridge the member's right to the free exercise of religion or whether the member's physical or mental condition has worsened as determined by the member's treating physician and substantiated by medical evidence.

SEC. 172. Section 24111 of the Education Code is amended to read:

24111. (a) A member who qualifies for disability retirement under this part pursuant to this chapter who is determined by the board to have a mental, physical, or vocational rehabilitation potential that could be expected to restore the member's ability to perform service in the member's former position of employment or in a comparable level position shall participate in an appropriate rehabilitation program approved by the board. The board shall pay all reasonable costs of the approved program. Willful failure to initiate and continue participation in the rehabilitation program shall cause the disability retirement allowance under this part to be terminated. In determining whether a member has good cause for failure to participate in the program the board shall take into account whether the participation would abridge the member's right to the free exercise of religion or whether the member's physical or mental condition has worsened as determined by the member's treating physician and substantiated by medical evidence.

(b) Any cost for the approved rehabilitation program prescribed by the board shall be paid directly by the system from the fund.

SEC. 173. Section 24112 of the Education Code is amended to read:

24112. The board may require a member receiving a disability retirement allowance under this part to undergo medical examination at such times as the board deems necessary. The system may request the member's treating physician, upon authorization by the retired member, to complete a medical reevaluation questionnaire. The system shall reimburse the retired member for all reasonable costs related to completion of this questionnaire in an amount not to exceed two hundred fifty dollars ($250) if the retired member has no other health coverage that would pay for the cost of completing the medical questionnaire. The board may authorize a

medical examination to be conducted by the retired member's treating source at the retired member's expense and, in any case, may require a medical examination to be conducted by a physician selected by the board, in which event, the board shall pay all reasonable costs associated with the examination. The board shall, in scheduling medical examinations, give consideration to the interests and convenience of the retired member. If the examination, together with other available information, shows to the satisfaction of the board that the retired member is no longer disabled, the disability retirement allowance shall be terminated. Should the retired member refuse to submit to medical examination, as provided in this section, the member's disability retirement allowance shall be terminated and all rights of the retired member to the disability retirement allowance shall be revoked.

SEC. 174. Section 24113 of the Education Code is amended to read:

24113. A member retired for disability under this part may be employed to perform creditable service subject to coverage under the Defined Benefit Program. The employment shall not cause the disability retirement allowance to be suspended or terminated, except as provided in Section 24112, and no deduction shall be made from the retired member's compensation as contributions to the plan under this part.

SEC. 175. Section 24114 of the Education Code is amended to read:

24114. (a) A member retired for disability under this part may be employed or self-employed in any capacity, notwithstanding Section 22132, but shall not make contributions to the retirement fund with respect to the Defined Benefit Program or accrue service credit under this part based on earnings from any employment.

(b) A member retired for disability under this part may earn in any one calendar year up to the limitation specified in subdivision (c) without a reduction in his or her disability retirement allowance.

(c) The limitation that shall apply to the earnings of a member retired for disability under this part shall be fifteen thousand dollars ($15,000), in any one school year, adjusted annually by the board each July 1 by the annual amount of increase in the All Urban California Consumer Price Index using December 1989 as the base.

(d) If a member retired for disability under this part earns in excess of the limitation specified in subdivision (c) from all employment in any calendar year, notwithstanding Section 22132, his or her retirement allowance shall be reduced by the amount of the excess earnings. The amount of the reduction may be equal to the monthly allowance payable but shall not exceed the amount of the annual allowance payable under this part for the calendar year in which the excess compensation was earned.

(e) The earnings limitation specified in this section shall not be applicable to a member retired for disability under this part who is

participating in an approved rehabilitation program pursuant to Section 24111.

(f) This section shall not be applicable to a member retired for disability under this part who began receiving a disability retirement allowance prior to October 16, 1992.

SEC. 176. Section 24116 of the Education Code is amended to read:

24116. A member retired for disability under this part whose last employment was in the California State University, as a member of the Defined Benefit Program or the Public Employees' Retirement System, may serve as a member of the teaching staff of the California State University and shall be subject to the employment limitations as provided by the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code).

SEC. 177. Section 24117 of the Education Code is amended to read:

24117. (a) A member retired for disability under this part may terminate the disability retirement allowance upon written request to the system.

(b) If a member retired for disability under this part is determined by the board to no longer be eligible to receive a disability retirement allowance pursuant to this chapter, the disability retirement allowance shall be terminated.

SEC. 178. Section 24118 of the Education Code is amended to read:

24118. (a) Upon termination of a disability retirement allowance that was payable pursuant to this chapter, the individual account of the member under this part shall be credited with the amount of the member's accumulated retirement contributions as they were on the effective date of disability retirement, less the sum of all payments made under subdivisions (a) and (b) of Section 24106. The reduction shall not be greater than the total of the accumulated retirement contributions.

(b) Upon the termination of a disability retirement, the accumulated annuity deposit contribution account of the member shall be credited with the amounts of those contributions as they were on the date the annuity became payable under this part because of that retirement less the sum of all payments made pursuant to subdivision (c) of Section 24106.

SEC. 179. Section 24119 of the Education Code is amended to read:

24119. When a member retired for disability under this part returns to work in the member's former position of employment or in a comparable level position and within six months of return experiences a recurrence of the original disability, which can be medically substantiated, it shall be considered, for the purpose of determining the duration of the disability, that the condition had its

onset as of the date the member first became disabled. The former disability retirement allowance shall again become payable as of the later of the first day of the month in which the recurrence of the disability occurred or the last day of service for which compensation is payable to the member, provided the member complies with Section 24103.

SEC. 180. Section 24203 of the Education Code is amended to read:

24203. (a) A member who has 30 years of credited service under this part may retire at age 50 years or older and receive an annual allowance equal to 2 percent of final compensation for each year of credited service. If the member has attained age 50 years, but has not attained early retirement age, the allowance shall be reduced by one-quarter of 1 percent for each full month or fraction of a month that will elapse until the member will attain early retirement age and one-half of 1 percent for each full month, or fraction of a month between early retirement age and normal retirement age.

(b) In computing the amounts described in subdivision (a), the age of the member on the last day of the month in which the retirement allowance begins to accrue or any later date provided in Section 24204 shall be used.

SEC. 181. Section 24204 of the Education Code is amended to read:

24204. A service retirement allowance under this part shall become effective upon any date designated by the member, provided all of the following conditions are met:

(a) An application for service retirement allowance is filed on a form provided by the system, that is executed no earlier than six months before the effective date of retirement allowance.

(b) The effective date is later than the last day of creditable service for which compensation is payable to the member.

(c) The effective date is no earlier than the first day of the month in which the application is received at the system's office in Sacramento.

(d) Either of the following conditions exists:

(1) The effective date is no earlier than one year following the date on which the retirement allowance was terminated under Section 24208, or subdivision (a) of Section 24117.

(2) The effective date is no earlier than the date upon and continuously after which the member is determined to the satisfaction of the board to have been mentally incompetent.

SEC. 182. Section 24205 of the Education Code is amended to read:

24205. (a) The board shall, in consultation with members, develop, adopt, and implement an additional early retirement alternative under this part that will allow a member to receive a minimum retirement allowance prior to normal retirement age if the member has at least attained early retirement age. Under the

alternative, the member shall continue to receive the minimum retirement allowance past normal retirement age until the total amount paid prior to normal retirement age equals the difference between the minimum retirement allowance and the retirement allowance that would have been paid to the member under Section 24202 or 24203, whichever is applicable, at normal retirement age, and thereafter the service retirement allowance for normal retirement age shall be paid. The board shall determine the age past normal retirement at which the increase will be made by determining how long the minimum retirement allowance would have to be paid beyond age 60 years in order for the amount paid prior to age 60 years to equal the difference between the minimum retirement allowance and the allowance that would have been paid to the member under service retirement at normal retirement age. The board shall integrate the early retirement alternative adopted under this section with the other early retirement alternatives that a member may elect under this chapter.

(b) For the purposes of this section, all contributions, liabilities, actuarial interest rates, and other valuation factors shall be determined on the basis of actuarial assumptions and methods which, in the aggregate, are reasonable and which, in combination, offer the actuary's best estimate of anticipated experience under the Defined Benefit Program.

(c) The additional employer contributions required, if any, under this section shall be computed as a level percentage of creditable compensation. The additional contribution rate required, if any, shall not be less than the sum of (1) the actuarial normal cost, plus (2) the additional contribution required to amortize the increase in accrued liability attributable to benefits elected under this section over a period of not more than 30 years from January 1, 1979.

SEC. 183. Section 24206 of the Education Code is amended to read:

24206. The minimum unmodified allowance, exclusive of annuities from accumulated annuity deposit contributions payable for service retirement under this part, shall not be less than ten dollars ($10) per month multiplied by the years of credited service. This guaranteed amount shall be reduced by the amount of an unmodified allowance payable from a local system based on service credited under this part. If the retirement is effective at less than age 60 years this allowance shall be reduced by one-half of 1 percent for each full month or fraction of a month that will elapse until the member would have reached age 60 years.

SEC. 184. Section 24207 of the Education Code is amended to read:

24207. If a retired member terminates a service retirement allowance and subsequently retires under this part, the minimum retirement allowance shall be the allowance provided by Section 24206.

SEC. 185. Section 24208 of the Education Code is amended to read:

24208. A member retired for service under this part may terminate the retirement allowance upon written request to the system.

SEC. 186. Section 24209 of the Education Code is amended to read:

24209. Upon retirement for service under this part following termination of a prior service retirement, the member shall receive a service retirement allowance equal to the sum of both of the following:

(a) An amount equal to the monthly allowance the member was receiving immediately preceding the most recent termination of retirement allowance, exclusive of any amounts payable pursuant to Section 22714 or 22715, increased by the improvement factor that would have been applied to the allowance if the member had not terminated the retirement allowance.

(b) An amount calculated pursuant to Section 24202, 24203, or 24206 on service credited subsequent to the most recent termination of retirement allowance, the member's age at retirement, and final compensation.

SEC. 187. Section 24210 of the Education Code is amended to read:

24210. Upon retirement for service under this part following a prior disability retirement granted pursuant to Chapter 26 (commencing with Section 24100) that was terminated, the member shall receive a service retirement allowance calculated pursuant to Section 24202, 24203, or 24206 and equal to the sum of both of the following:

(a) An amount based on service credit accrued prior to the effective date of the disability retirement, the member's age as of the effective date of the service retirement, and indexed final compensation to the effective date of the service retirement.

(b) An amount based on the service credit accrued after termination of the disability retirement, the member's age as of the effective date of service retirement, and final compensation.

SEC. 188. Section 24211 of the Education Code is amended to read:

24211. When a member who has been granted a disability allowance under this part after June 30, 1972, returns to employment subject to coverage under the Defined Benefit Program and performs:

(a) Less than three years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance which is the sum of the allowance calculated on service credit accrued after the termination date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using

compensation earnable and projected final compensation, plus the greater of either of the following:

(1) A service retirement allowance calculated on service credit accrued as of the effective date of the disability allowance, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and projected final compensation to the termination date of the disability allowance.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

(b) Three or more years of creditable service after termination of the disability allowance, the member shall receive a retirement allowance that is the greater of the following:

(1) A service retirement allowance calculated on all actual and projected service, the age of the member on the last day of the month in which the retirement allowance begins to accrue, and final compensation using compensation earnable, or projected final compensation, or a combination of both.

(2) The disability allowance the member was receiving immediately prior to termination of that allowance, excluding children's portions.

SEC. 189. Section 24212 of the Education Code is amended to read:

24212. If a disability allowance granted under this part after June 30, 1972, is terminated for reasons other than those specified in Section 24213 and the member does not return to employment subject to coverage by the plan, the service retirement allowance, when payable, shall be based on projected service, projected final compensation, and the age of the member on the last day of the month in which the retirement allowance begins to accrue. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance excluding children's portions.

SEC. 190. Section 24213 of the Education Code is amended to read:

24213. (a) When a member who has been granted a disability allowance under this part after June 30, 1972, attains normal retirement age, or at a later date when there is no dependent child, the disability allowance shall be terminated and the member shall be eligible for service retirement. The retirement allowance shall be calculated on the projected final compensation and projected service to normal retirement age. The allowance payable under this section, excluding annuities payable from accumulated annuity deposit contributions, shall not be greater than the terminated disability allowance.

(b) Upon retirement, the member may elect to modify the service retirement allowance payable in accordance with any option provided under this part.

SEC. 191. Section 24214 of the Education Code is amended to read:

24214. (a) A member retired for service under this part may perform the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system, but the member shall not make contributions to the retirement fund or accrue service credit based on compensation earned from that service.

(b) The rate of pay for service performed by a member retired for service under this part as an employee of the employer shall not be less than the minimum, nor exceed that paid by the employer to other employees performing comparable duties.

(c) A member retired for service under this part shall not be required to reinstate for performing the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5, as an employee of an employer, as an employee of a third party, or as an independent contractor within the California public school system.

(d) A member retired for service under this part may earn compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 in any one school year up to the limitation specified in subdivision (f) as an employee of an employer, as an employee of a third party, or an independent contractor, within the California public school system, without a reduction in his or her retirement allowance.

(e) The postretirement compensation limitation provisions set forth in this section shall not be applicable to compensation earned for the performance of the activities described in subdivision (a) for which the employer is not eligible to receive state apportionment or to compensation that is not creditable pursuant to Section 22119.2.

(f) The limitation that shall apply to the compensation for performance of the activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section 22119.5 by a member retired for service under this part either as an employee of an employer, an employee of a third party, or as an independent contractor, shall be fifteen thousand dollars ($15,000), in any one school year, adjusted annually by the board each July 1 by the annual amount of increase in the All Urban California Consumer Price Index using December 1989 as the base.

(g) If a member retired for service under this part earns compensation for performing activities identified in paragraphs (1) to (9), inclusive, of subdivision (a), or subdivision (b), of Section

22119.5 in excess of the limitation specified in subdivision (f), as an employee of an employer, as an employee of a third party, or as an independent contractor, within the California public school system, the member's retirement allowance shall be reduced by the amount of the excess compensation. The amount of the reduction may be equal to the monthly allowance payable but shall not exceed the amount of the annual allowance payable under this part for the fiscal year in which the excess compensation was earned.

(h) The amendments to this section enacted during the 1995–96 Regular Session shall be deemed to have become operative on July 1, 1996.

SEC. 192. Section 24215 of the Education Code is amended to read:

24215. A member retired for service under this part whose last employment was in the California State University, as a member of the Defined Benefit Program or the Public Employees' Retirement System, may serve as a member of the teaching staff of the California State University and shall be subject to the employment limitations as provided by the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5 of Title 2 of the Government Code).

SEC. 193. Section 24216 of the Education Code is amended to read:

24216. (a) (1) A member retired for service under this part who is appointed as a trustee or administrator by the Superintendent of Public Instruction pursuant to Section 41320.1, or a member retired for service who is assigned by a county superintendent of schools pursuant to Article 2 (commencing with Section 42120) of Chapter 6 of Part 24, shall be exempt from subdivisions (d), (e), and (f) of Section 24214 for a maximum period of two years.

(2) The period of exemption shall commence on the date the member retired for service is appointed or assigned and shall end no more than two calendar years from that date, after which the limitation specified in subdivisions (d), (e), and (f) of Section 24214 shall apply.

(3) An exemption under this subdivision shall be granted by the system providing that the Superintendent of Public Instruction or the county superintendent of schools submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(b) (1) A member retired for service under this part who is employed by an employer to perform creditable service in an emergency situation to fill a vacant administrative position requiring highly specialized skills shall be exempt from the provisions of subdivisions (d), (e) and (f) of Section 24214 for creditable service performed up to one-half of the full-time equivalent for that position, if the vacancy occurred due to circumstances beyond the control of the employer. The limitation specified in subdivisions (d), (e), and

(f) of Section 24214 shall apply to creditable service performed beyond the specified exemption.

(2) An exemption under this subdivision shall be granted by the system subject to the following conditions:

(A) The recruitment process to fill the vacancy on a permanent basis is expected to extend over several months.

(B) The employment is reported in a public meeting of the governing body of the employer.

(C) The employer submits documentation required by the system to substantiate the eligibility of the member retired for service for an exemption under this subdivision.

(c) This section shall not apply to any person who has received additional service credit pursuant to Section 22715 or 22716.

(d) A person who has received additional service credit pursuant to Section 22714 shall be ineligible for one year from the effective date of retirement for the exemption provided in this section for service performed in the district from which he or she retired.

(e) This section shall become operative on July 1, 1995, and shall remain in effect only until July 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before July 1, 2003, deletes or extends that date.

SEC. 194. Section 24216.5 of the Education Code is amended to read:

24216.5. (a) The compensation earned by a member who retired for service under this part shall be exempt from subdivisions (d), (f), and (g) of Section 24214, if all of the following conditions are met:

(1) The member retired for service with an effective date on or before July 1, 1998.

(2) The member retired for service is employed by a school district to provide:

(A) Direct classroom instruction to students in newly created grades kindergarten through 3; or

(B) Is temporarily filling a position in grades 4 through 12 that was vacated due to a teacher transferring to a classroom in grades kindergarten through 3 within the same district that was created to meet the objectives of the Class Size Reduction Program set forth in Chapter 6.10 (commencing with Section 52120) of Part 28.

(3) All members retired for service whose employment with a school district meets the conditions specified in this section shall be treated as a distinct class of temporary employees within the existing bargaining unit whose service shall not be included in computing the service required as a prerequisite to attainment of or eligibility for classification as a permanent employee of a school district. The compensation for service performed by this class of employees shall be established in accordance with subdivision (b) of Section 24214 and agreed to in the collective bargaining agreement between the employing school district and the exclusive representative for the

existing bargaining unit within which these temporary employees of the school district are treated as a distinct class.

(4) The employing school district submits documentation required by the system to substantiate the eligibility of the temporary employment of a member retired for service for the exemption under this subdivision.

(b) A school district that employs a member retired for service pursuant to this section shall maintain accurate records of the retired member's compensation earned and shall report that compensation monthly to the system regardless of the method of payment or the source of funds from which the compensation is paid.

(c) Upon written request to the system, a member who retired for service under this part with an effective date on or before July 1, 1996, and who, between July 1, 1996, and 60 days following the effective date of this section, terminated his or her service retirement allowance and returned to employment that qualifies for the exemption specified in subdivision (a) may cancel his or her reinstatement and return to status as a member retired for service as if the service retirement allowance had not been terminated.

(d) This section shall not apply to the compensation earned for creditable service performed by a member retired for service for a county office of education or a community college district.

(e) This section shall become operative on July 1, 1996, and shall remain in effect only until July 1, 2002, and as of that date is repealed unless a later enacted statute which is enacted before July 1, 2002, deletes or extends that date.

SEC. 195. Section 24217 of the Education Code is amended to read:

24217. A person who was a member under this part on June 30, 1972, and had five or more years of service and who had attained age 55 years, shall have the option of receiving the allowance payable under Section 14245, as it read on that date in lieu of the allowance payable under subdivision (a) of Section 24202.

SEC. 196. Section 24301 of the Education Code is amended to read:

24301. (a) A member who has filed an application under this part for a disability retirement pursuant to Chapter 26 (commencing with Section 24100) may elect, as provided in Section 24300 to receive an actuarially modified disability retirement allowance. After receipt of a disability retirement application from a member, the board shall mail an acknowledgment notice to the member. A 30-day period shall commence with the mailing of the acknowledgment, during which time the member may change the option election made on the disability retirement application.

(b) The option shall become effective on the effective date of the disability retirement allowance. The modification of the disability retirement allowance under the option elected shall be based on the ages of the retired member and the designated option beneficiary as

of the effective date of the disability retirement. The modification shall be applicable only to the disability retirement allowance payable pursuant to subdivision (a) of Section 24106.

(c) The elected option may not be revoked or changed after the later of the effective date of the disability retirement allowance or 30 days after the mailing of the acknowledgment notice pursuant to this section.

(d) If a member dies prior to electing an unmodified allowance or an option, the death benefits shall be payable under Chapter 23 (commencing with Section 23850), regardless of whether the disability retirement application is or would have been approved.

SEC. 197. Section 24308 of the Education Code is amended to read:

24308. (a) The election of an option as provided in Section 24307 shall preclude the payment of a family allowance to any beneficiary under this part.

(b) The preretirement election of an option made by the member pursuant to Section 24307 shall be voided by the board as of the effective date of an approved disability retirement under this part. Members receiving a disability retirement allowance pursuant to Chapter 26 (commencing with Section 24100) may not file an election of option as provided in Section 24307.

(c) The election of an option as provided in Section 24307 shall preclude the payment of a survivor benefit allowance pursuant to Chapter 23 (commencing with Section 23850) and shall preclude the payment of the remaining balance of the member's accumulated retirement contributions prior to the death of the option beneficiary.

SEC. 198. Section 24309 of the Education Code is amended to read:

24309. (a) A member may cancel the election of an option made pursuant to Section 24307, providing written cancellation is received by the board on or before the day preceding the effective date of retirement under this part or during the period between termination of the retirement allowance pursuant to Section 24208 or 24117 and the effective date of the subsequent retirement under this part. Regardless of how the member elects to receive his or her retirement allowance, that allowance shall be reduced by an amount determined by the board to be the actuarial equivalent of the coverage the member received as a result of the preretirement election and that does not result in any adverse funding to the plan.

(b) If the option beneficiary designated in the preretirement election of an option pursuant to Section 24307 dies prior to the member's retirement, the preretirement election shall be canceled as of the day following the date of death and the member's subsequent retirement allowance under this part shall be subject to the allowance reduction prescribed in this section.

SEC. 199. Section 24311 of the Education Code is amended to read:

24311. (a) A member who has a preretirement election of an option in effect on December 31, 1990, may change his or her preretirement election of Option 2, Option 3, Option 4, or Option 5, to either Option 6 or Option 7 without the allowance reduction prescribed in Sections 24309 and 24310, provided the change is made on or after January 1, 1991, and prior to the earlier of January 1, 1992, or the member's retirement under this part.

(b) If the member elects to change his or her option under this section, then the member shall retain the same option beneficiary as named in the prior preretirement election. The election to change the preretirement election under this section shall be void if not received in the system's office in Sacramento at least 30 days prior to the death of the option beneficiary.

SEC. 200. Section 24400 of the Education Code is amended to read:

24400. The Legislature recognizes that inflation erodes the purchasing power of benefits paid under the plan under this part. It is the intent of the Legislature to understand the degree of erosion of these benefits. The board shall report to the Governor and Legislature no later than April 1 of each year on the extent to which inflation has eroded the purchasing power of benefits provided under the Defined Benefit Program. The board shall indicate the amount of supplementary increases in retirement allowances required to preserve the purchasing power of benefits provided by the Defined Benefit Program. The board shall also determine and report on the increases.

SEC. 201. Section 24417 of the Education Code is amended to read:

24417. (a) The proceeds of an auxiliary Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments, commencing when funds in the Supplemental Benefit Maintenance Account are insufficient to support 75 percent, to retired members, disabled members, and beneficiaries under this part. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412 and Section 24415.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as defined in Section 24412 and Section 24415, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of

the calendar year of benefit effective date and June of the fiscal year preceding the fiscal year of distribution.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The benefits provided by subdivision (b) are not cumulative, nor part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account and the auxiliary Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The distributions authorized by this section are not vested and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Section 22140 and 22141.

SEC. 202. Section 24505 of the Education Code is amended to read:

24505. Actions brought by the board or its agent under contract pursuant to this chapter shall be commenced within three years after the liability of the system to pay benefits under the plan is fixed. Liability of the plan is fixed at the time the board approves the payment of benefits under this plan.

SEC. 203. Section 24600 of the Education Code, as added by Section 36 of Chapter 1165 of the Statutes of 1996, is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance is terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability allowance and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the

earlier of either the termination of the child's eligibility or the termination of the allowance.

(1) Until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is eligible as a full-time student to receive a child's portion of an allowance shall continue to be eligible for a child's portion until the person attains 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age.

(2) Notwithstanding subdivision (e) of Section 22123, until January 1, 2002, a person who on December 31, 1996, is between 18 and 22 years of age and who is not eligible as a full-time student to receive a child's portion of an allowance, may return to school on a full-time basis on or after January 1, 1997, and become eligible for a child's portion from the date of return to full-time student status until 22 years of age or until the first day of the month following the end of the school quarter or semester that is in progress in the month the person attains 22 years of age provided prior verification of full-time student status is received by the board. If verification is not received by the board prior to the date the person attains 22 years of age, the allowance or the child's portion of the allowance shall cease on the day the full-time student attains 22 years of age. No benefits shall be payable under this paragraph for a person who does not return to school as a full-time student prior to attaining 22 years of age.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive, of this section.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan with respect to the Defined Benefit Program shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100), not later than April 1 of the calendar year following the later of both of the following:

(A) The calendar year in which the member attains age $70\frac{1}{2}$ years.

(B) The calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains age $70^1/_2$ years; or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), the phrase "terminates employment" means the later of the termination of employment subject to coverage under the Defined Benefit Program or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) 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. 204. Section 24600 of the Education Code, as added by Section 36.5 of Chapter 1165 of the Statutes of 1996, is amended to read:

24600. (a) A retirement allowance under this part begins to accrue on the effective date of the member's retirement and ceases on the earlier of the day of the member's death or the day on which the retirement allowance terminated for a reason other than the member's death.

(b) A retirement allowance payable to an option beneficiary under this part begins to accrue on the day following the day of the retired member's death and ceases on the day of the option beneficiary's death.

(c) A disability allowance under this part begins to accrue on the effective date of the member's disability and ceases on the earlier of the day of the member's death or the day on which the disability allowance terminated for a reason other than the member's death.

(d) A family allowance under this part begins to accrue on the day following the day of the member's death and ceases on the day of the event that terminates eligibility for the allowance.

(e) A survivor benefit allowance payable to a surviving spouse under this part pursuant to Chapter 23 (commencing with Section 23850) begins to accrue on the day the member would have attained 60 years of age or on the day following the day of the member's death, as elected by the surviving spouse, and ceases on the day of the surviving spouse's death.

(f) A child's portion of an allowance under this part begins to accrue on the effective date of that allowance and ceases on the earlier of either the termination of the child's eligibility or the termination of the allowance. An allowance payable because of a

full-time student shall terminate on the first day of the month following the end of the school quarter or semester that is in progress in the month the full-time student attains 22 years of age. Any adjustment to an allowance because of a full-time student's periods of nonattendance shall be made as follows: the allowance shall cease on the first day of the month in which return to full-time attendance was required and shall begin to accrue again on the first day of the month in which full-time attendance resumes.

(g) Supplemental payments issued under this part pursuant to Sections 24701, 24702, and 24703 to retired members, disabled members, and beneficiaries shall begin to accrue pursuant to Sections 24701, 24702, and 24703 and shall cease to accrue as of the termination dates specified in subdivisions (a) to (f), inclusive.

(h) Notwithstanding any other provision of this part or other law, distributions from the plan with respect to the Defined Benefit Program shall be made in accordance with Section 401(a)(9) of the Internal Revenue Code of 1986, as amended, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder, and the required beginning date of benefit payments that represent the entire interest of the member in the plan with respect to the Defined Benefit Program shall be as follows:

(1) In the case of a refund of contributions, as described in Chapter 12 (commencing with Section 23100) of this part, not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 $^{1}/_{2}$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i).

(2) In the case of a retirement allowance, as defined in Section 22150, beginning not later than April 1 of the calendar year following the later of (A) the calendar year in which the member attains 70 $^{1}/_{2}$ years of age or (B) the calendar year in which the member terminates employment within the meaning of subdivision (i), to continue over the life of the member or the lives of the member and the member's option beneficiary, or over the life expectancy of the member or the life expectancy of the member and the member's option beneficiary.

(i) For purposes of subdivision (h), "terminates employment" means the later of the termination of employment subject to coverage by the plan or the termination of employment in a position requiring or permitting membership in another public retirement system in this state the compensation from which may be included in final compensation under Section 22127.

(j) This section shall become operative on January 1, 2002.

SEC. 205. Section 24603 of the Education Code is amended to read:

24603. If any estimated allowances under this part are more or less than the correct amount due, the difference between the correct amount and the estimated allowance shall be adjusted in subsequent

payments or the Controller may state an account with the retired member, disabled member, or beneficiary, pursuant to Section 12419 of the Government Code.

SEC. 206. Section 24604 of the Education Code is amended to read:

24604. (a) A retired member, disabled member, or beneficiary under this part shall specify whether monthly benefit payments are to be disbursed by: (1) direct deposit (electronic funds transfer); (2) direct mail to a financial or other institution; or (3) mailing to a payment address provided by the retired member, disabled member, or beneficiary.

(b) A member or beneficiary under this part to whom a lump-sum payment or benefit is to be disbursed shall specify the address to which the payment shall be mailed.

(c) (1) The board shall send a copy of the benefit payment information to any retired member, disabled member, or beneficiary under this part who has payments transmitted directly by electronic funds transfer or by mail to a financial institution, unless the board has received a written request from that person not to send a copy of the information.

(2) The board shall notify the retired member, disabled member, or beneficiary, in the monthly benefit payment notice, of the right to request that no copy of the benefit payment information be mailed, pursuant to paragraph (1).

(d) A payment disbursed as specified by the member or beneficiary under this part shall fully discharge the board, system, and plan from any claim resulting from actions taken under this section.

SEC. 207. Section 24605 of the Education Code is amended to read:

24605. Upon receipt of proof satisfactory to the board, that a warrant drawn in payment of a retirement allowance or in payment of any other account due from the plan under this part, has been lost or that payment transmitted electronically cannot be credited to an account, the Controller upon the request of the board shall issue a replacement warrant in payment of the same amount, without requiring a bond from the payee, and any loss incurred in connection therewith shall be charged against the fund from which the payment was derived.

SEC. 208. Section 24606 of the Education Code is amended to read:

24606. (a) Whenever any warrant drawn in payment of contributions or accumulated contributions or benefits under this plan under this part remains unclaimed or the legal claimant cannot be found, the board shall redeposit the proceeds of the warrant in the retirement fund, and shall hold the proceeds for the legal claimant without further accumulation of interest, and the redeposit shall not operate to establish the membership of the claimant in this plan.

(b) Subdivision (a) shall apply to warrants drawn and canceled by the Controller pursuant to Section 17070 of the Government Code, except that upon notice of cancellation, the proceeds revert to and become a part of the retirement fund, and shall be applied to meet the liabilities of the retirement fund with respect to the Defined Benefit Program.

(c) The board may at any time, after reversion of proceeds as provided above to the retirement fund and upon receipt of proper information satisfactory to it, return from the retirement fund an amount equal to those proceeds to the credit of the legal claimant.

SEC. 209. Section 24607 of the Education Code is amended to read:

24607. Any warrant in an amount less than two thousand dollars ($2,000) paid by the system under this part, for the month in which a retired member or disabled member dies, shall not be invalidated by the system, except upon the request of the beneficiary of the retired member or disabled member.

SEC. 210. Section 24608 of the Education Code is amended to read:

24608. (a) Persons entitled to receive allowances under the plan under this part may authorize deductions to be made from those allowances, in accordance with procedures established by the board.

(b) The board shall determine the additional cost involved in making deductions under this section, and may require the public agency, association, insurance carrier, or unit thereof to pay the amount of the additional cost to the board for deposit in the retirement fund to the credit of the Defined Benefit Program.

SEC. 211. Section 24609 of the Education Code is amended to read:

24609. Any allowance payable under this part to a retired member, that has accrued and remains unpaid at the time of his or her death, shall be paid to either of the following:

(a) The option beneficiary entitled to payment in accordance with an option elected by the member.

(b) The beneficiary entitled to receive the lump-sum death benefit provided upon death of a retired member if the member has not elected an option.

SEC. 212. Section 24610 of the Education Code is amended to read:

24610. Any disability allowance under this part that has accrued and remains unpaid to a disabled member at the time of death shall be paid to the person entitled to receive a family allowance under this part or, if none, to the beneficiary entitled to receive the death payment under this part.

SEC. 213. Section 24612 of the Education Code is amended to read:

24612. (a) If any person entitled to a benefit from the plan under this part is a minor who has no guardian of his or her estate, the

benefit, not to exceed two thousand dollars ($2,000), may be paid to the person entitled to the custody of the minor to hold for the minor, upon the written statement, duly acknowledged and verified, of the person that the total estate of the minor does not exceed two thousand five hundred dollars ($2,500) in value.

(b) The payment shall constitute full discharge of any and all liabilities of the board, system, and plan.

(c) The person shall account to the minor for the money when the minor reaches the age of majority.

(d) Notwithstanding any other provision of this section, a natural parent or an adoptive parent having custody of the minor shall not be required to establish a guardianship for the purpose of collecting a survivor benefit, family benefit, or death benefit under this part.

SEC. 214. Section 24613 of the Education Code is amended to read:

24613. (a) Payment pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons under this part constitutes a complete discharge and release of the board, system, and plan from liability for that payment.

(b) Notwithstanding Sections 751 and 1100 of the Family Code relating to community property interests, whenever payment or refund is made by this system to a member, former member, or beneficiary of a member pursuant to this part, the payment shall fully discharge the board, system, and plan from all adverse claims thereto unless, before payment is made, a written notice of adverse claim is received at the system's office in Sacramento.

SEC. 215. Section 24615 of the Education Code is amended to read:

24615. If the board determines that contributions are due the system under this part from a retired member, disabled member, or a person who has died and the person is unable to pay the amount due, the board may withhold all or part of subsequent payments due the retired member, disabled member, or survivor, until the amounts withheld equal the contributions due plus regular interest to the date of payment. Total contributions plus regular interest due shall be recovered by the system within 18 months.

SEC. 216. Section 24617 of the Education Code is amended to read:

24617. (a) To recover an amount overpaid under this part, the corrected monthly allowance may be reduced by no more than 5 percent if the overpayment was due to error by the system, the county superintendent of schools, a school district, or a community college district, and by no more than 15 percent if the error was due to inaccurate information or nonsubmission of information by the recipient of the allowance.

(b) This section shall not apply to the collection of overpayments due to fraud or intentional misrepresentation of facts by the recipient of the allowance.

SEC. 217. Section 24618 of the Education Code is amended to read:

24618. Losses or gains resulting from overpayment or underpayment of contributions or other amounts under this part within the limits set by the State Board of Control for automatic writeoff, and losses or gains in greater amounts specifically approved for writeoffs by the State Board of Control, shall be debited or credited, as the case may be, to the appropriate reserve in the retirement fund.

SEC. 218. Section 24619 of the Education Code is amended to read:

24619. The system shall annually report to the board the following information:

(a) The amount of underpayment made to recipients under this part.

(b) The amount to be recovered because of overpayments and the number of overpayments under this part.

(c) The actions taken by the board and the system to reduce the number and amount of overpayments and underpayments under this part.

SEC. 219. Section 24700 of the Education Code is amended to read:

24700. On July 1, 1972, and thereafter all persons who first enter employment in the San Francisco Unified School District or the San Francisco Community College District to perform creditable service subject to coverage under the Defined Benefit Program are members of the plan in accordance with Section 22501. These new members are excluded from coverage under Subchapter II (commencing with Section 401) of Chapter 7 of Title 42 of the United States Code, for service performed as a member of the plan.

SEC. 220. Section 24701 of the Education Code is amended to read:

24701. Those credentialed members of the San Francisco City and County Employees' Retirement System on June 30, 1972, who make an irrevocable election to be covered only by the State Teachers' Retirement Plan under this part for prior and future service performed in San Francisco, shall be allowed to be covered for other certificated service concurrently, where the provisions of the city and county charter permit. This shall not include any credited service, as defined in Section 22121.

SEC. 221. Section 24702 of the Education Code is amended to read:

24702. (a) All persons on the San Francisco system retired rolls on June 30, 1972, shall remain on the local rolls. The State Teachers' Retirement System shall continue the subvention in Section 24706 for

those persons, shall apply the percentage update and annual improvement factor to payments being made under the Defined Benefit Program directly to those persons, and shall pay the retired death payment upon their death.

(b) The allowance that would have been payable had the member retired solely under the Defined Benefit Program, including the percentage update calculated under Sections 14332, 14333, and 14334, as enacted by Chapter 2 of the Statutes of 1959, as those sections read on December 31, 1974, shall be taken into account in computing the amount of increase for the ten dollar ($10) a month per year of service minimum unmodified allowance.

SEC. 222. Section 24703 of the Education Code is amended to read:

24703. Persons who select to be covered only by the Defined Benefit Program and already have credit for classified or other noncertificated service in the San Francisco local system shall not have that credit transferred to the Defined Benefit Program.

SEC. 223. Section 24704 of the Education Code is amended to read:

24704. The San Francisco City and County Employees' Retirement System shall provide concurrent retirement benefits for classified and other noncertificated service in the San Francisco system according to the provisions applicable to miscellaneous employees of the time of the concurrent retirement for:

(a) Members of that system who transfer to the Defined Benefit Program after June 30, 1972.

(b) Persons who were members of both the San Francisco system and the Defined Benefit Program on June 30, 1972.

(c) Any person who could have qualified under subdivision (b) if he or she had not taken a refund from either the San Francisco System or the Defined Benefit Program, but not both, provided the person qualifies for and redeposits prior to retirement.

SEC. 224. Section 24750 of the Education Code is amended to read:

24750. Those members who took a refund of their accumulated contributions from the former Los Angeles Unified School District Retirement System or the former Los Angeles Community College District Retirement System or the San Francisco City and County Employees' Retirement System, prior to July 1, 1972, and who have former Permanent Fund contributions only on deposit related to former local system service shall have those accumulated former Permanent Fund contributions on deposit as of July 1, 1972, treated in the same manner as accumulated retirement contributions of all nonlocal members. Upon discovery and notification to those members, they shall do either of the following:

(a) Redeposit the contributions required to bring the account into full balance with regular interest prior to retirement under this part.

(b) Leave those former Permanent Fund accumulated contributions on deposit and receive a reduced retirement allowance under the law as it read on June 30, 1972.

SEC. 225. Section 24751 of the Education Code is amended to read:

24751. Those members who took a refund of their accumulated contributions from the former Los Angeles Unified School District Retirement System or the former Los Angeles Community College District Retirement System or the San Francisco City and County Employees' Retirement System, prior to July 1, 1972, and who also took a refund of their Permanent Fund contributions from the State Teachers' Retirement System with respect to the Defined Benefit Program, and who redeposited their contributions in the local system but did not redeposit their Permanent Fund contributions in the State Teachers' Retirement System with respect to the Defined Benefit Program, shall redeposit the contributions required to bring the account into full balance with regular interest from the date of refund to the date of payment. The redeposit may be made immediately upon notification by the system and shall be made prior to retirement under this part. The redeposit shall be made in a lump sum or by installment payments as specified by the chief executive officer.

SEC. 226. Section 24950 of the Education Code is amended to read:

24950. An annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code of 1986 shall be offered to all employees of any state agency who are members of the plan under this part or any employee of a local public agency or political subdivision of this state that employs persons to perform creditable service subject to coverage by the plan under this part. The following criteria shall apply to that annuity contract and custodial account:

(a) The annuity contract and custodial account shall be offered for at least five years.

(b) The annuity contract and custodial account may be administered by a qualified third-party administrator that shall, under agreement with the system, provide custodial, investment, recordkeeping, or administrative services, or any combination thereof. The third-party administrator shall not provide investment options.

(c) The investment options offered shall be determined by the board consistent with those annuity contract and custodial accounts described in Section 403(b) of the Internal Revenue Code of 1986.

(d) The system's investment staff shall make recommendations to the board as to the appropriate investment options. At a minimum, the board shall offer at least three investment options. The board shall have sole responsibility for the selection of service providers.

(e) All contributions made in accordance with the provisions of Section 403(b) of the Internal Revenue Code of 1986 and this section

shall be remitted directly to the administrator and held by the administrator in a custodial account on behalf of the employee. Any investment gains or losses shall be credited to those accounts. The forms of payment and disbursement procedure shall be consistent with those generally offered by similar annuity contracts and custodial accounts and applicable federal and state statutes governing those contracts and accounts.

(f) Any employer, other than the state, may elect to make contributions to the employee's annuity contract and custodial account on behalf of the employee. The employer shall take whatever action is necessary to implement this section, including the adoption of an annuity contract and custodial account, or provide the appropriate authorization in accordance with the provision of Section 403(b) of the Internal Revenue Code of 1986. Employer contributions made under this section are excluded from the definition of creditable compensation as provided in Section 22119.2.

(g) The design and administration of the annuity contract and custodial account shall comply with the applicable provisions of the Internal Revenue Code of 1986 and the Revenue and Taxation Code. Section 770.3 of the Insurance Code shall not be applicable.

SEC. 227. Section 24951 of the Education Code is amended to read:

24951. If the rate of participation in the annuity contract and custodial account is less than 2 percent of active members in the Defined Benefit Program upon the completion of the initial five years of administration, the board may elect to terminate the offering of the annuity contract and custodial account as described in Section 403(b) of the Internal Revenue Code of 1986. The board shall provide two years' notice to the annuity contract and custodial account participants of its intention to terminate.

SEC. 228. Section 25000 of the Education Code is amended to read:

25000. (a) The board may develop one or more deferred compensation plans under Section 457 of the Internal Revenue Code which an employer may choose to establish and offer to its employees who are members of the plan under this part or Part 14 (commencing with Section 26000).

(b) In the event that an employer adopts a deferred compensation plan described in subdivision (a):

(1) The employer shall enter into a written contractual arrangement with the system under which the system, or a third-party administrator acting on behalf of the system, shall provide investment, recordkeeping, and administrative services for the deferred compensation plan.

(2) The initial period of the contractual arrangement described in paragraph (1) shall be for a term of five years.

(3) The deferred compensation plan shall continue to constitute a separate plan established and maintained by the adopting employer.

(4) The system shall be treated as acting on behalf of the employer in administering the deferred compensation plan.

(5) The terms and administration of the deferred compensation plan shall be in accordance with the applicable provisions of Section 457 of the Internal Revenue Code.

(6) The interest of an employee, or his or her beneficiary, participating in the deferred compensation plan in the assets, including amounts deferred under the plan and paid over to the Teachers' Deferred Compensation Fund described in Section 25001, of the employer sponsoring the deferred compensation plan shall not be senior to that of the general creditors of the employer.

(7) In administering the deferred compensation plan on behalf of the employer, the board shall have the same investment authority and discretion and be subject to the same fiduciary standards pursuant to Chapter 4 (commencing with Section 22250), with respect to amounts deferred under the deferred compensation plan as applied by the system with respect to the Teachers' Retirement Fund.

(c) In the event that an employer establishes and maintains a deferred compensation plan described in subdivision (a), the deferred compensation plan shall be offered to all of its employees who are members of the plan under this part or Part 14 (commencing with Section 26000).

(d) An employee participating in a deferred compensation plan established by an employer under this section shall enter into a written agreement with the employer for the deferral of compensation prior to the performance of the services to which that compensation relates.

(e) In the event that an employer chooses to establish and maintain a deferred compensation plan described in subdivision (a) that is to be administered by the system, the employer shall take all necessary or appropriate action to implement this section in cooperation with the system.

SEC. 229. Section 26001 of the Education Code is amended to read:

26001. The design and administration of the plan, including the Cash Balance Benefit Program, shall comply with the applicable provisions of the Internal Revenue Code and the Revenue and Taxation Code. The Teachers' Retirement Board may amend the plan to comply with the applicable federal laws and regulations to the extent permitted by law, to establish or revise the minimum interest rate, to declare additional earnings credit, to declare additional annuity credit, and to adopt and amend actuarial assumptions for all purposes under the plan.

SEC. 230. Section 26002 of the Education Code is amended to read:

26002. The Cash Balance Benefit Program shall be administered by the Teachers' Retirement Board with all of the powers, responsibilities and duties for administration of the plan set forth in Chapter 3 (commencing with Section 22200) through Chapter 7 (commencing with Section 22375) of Part 13. In administering the plan, the board and its officers and employees of the system shall exercise their fiduciary duties set forth in Chapter 4 (commencing with Section 22250) of Part 13.

SEC. 231. Section 26102 of the Education Code is amended to read:

26102. "Actuary" means a person professionally trained in the technical and mathematical aspects of insurance, pensions, and related fields who has been appointed by the board for the purpose of actuarial services required under this part.

SEC. 232. Section 26113 of the Education Code is amended to read:

26113. (a) "Creditable Service" means any of the following activities performed for an employer in a position requiring a credential, certificate, or permit pursuant to this code or under the appropriate minimum standards adopted by the Board of Governors of the California Community Colleges or under the provisions of an approved charter for the operation of a charter school for which the employer is eligible to receive state apportionment or pursuant to a contract between a community college district and the United States Department of Defense to provide vocational training:

(1) The work of teachers, instructors, district interns and academic employees employed in the instructional program for pupils, including special programs such as adult education, regional occupational programs, child care centers, and prekindergarten programs pursuant to Section 22161.

(2) Education or vocational counseling, guidance, and placement services.

(3) The work of directors, coordinators, and assistant administrators who plan courses of study to be used in California public schools, or research connected with the evaluation or efficiency of the instructional program.

(4) The selection, collection, preparation, classification, demonstration, or evaluation of instructional materials of any course of study for use in the development of the instructional program in California public schools, or other services related to school curriculum.

(5) The examination, selection, in-service training, or assignment of teachers, principals or other similar personnel involved in the instructional program.

(6) School activities related to, and an outgrowth of, the instructional and guidance program of the school when performed in addition to other activities described in this section.

(7) The work of nurses, physicians, speech therapists, psychologists, audiometrists, audiologists, and other school health professionals.

(8) Services as a school librarian.

(9) The work of county and district superintendents and other employees who are responsible for the supervision of persons or administration of the duties described in this section.

(b) "Creditable service" also means the work of superintendents of California public schools.

(c) The board shall have final authority for determining creditable service to cover any activities not already specified.

SEC. 233. Section 26117 of the Education Code is amended to read:

26117. "Disability date" means the date the benefit becomes payable to a participant who has applied for a disability benefit from the plan under this part and has been determined to have a total and permanent disability.

SEC. 234. Section 26119 of the Education Code is amended to read:

26119. "Employee account" means the nominal account of the participant to which employee contributions and interest and any additional earnings credits in respect thereof are credited under the Cash Balance Benefit Program.

SEC. 235. Section 26120 of the Education Code is amended to read:

26120. "Employee contribution rate" means the percentage of the participant's salary withheld by the employer as an employee contribution under the Cash Balance Benefit Program.

SEC. 236. Section 26121 of the Education Code is amended to read:

26121. "Employee contribution" means the amount withheld from the participant's salary by the employer as a contribution by the employee under the Cash Balance Benefit Program.

SEC. 237. Section 26123 of the Education Code is amended to read:

26123. "Employer account" means the nominal account of the participant in which employer contributions on behalf of the participant and interest and any additional earnings credits in respect thereof are credited under the Cash Balance Benefit Program.

SEC. 238. Section 26124 of the Education Code is amended to read:

26124. "Employer contribution rate" means the percentage of salary that determines the amount the employer contributes to the

Cash Balance Benefit Program with respect to each employee who is a participant.

SEC. 239. Section 26125 of the Education Code is amended to read:

26125. "Employer contribution" means the amount contributed by the employer to the Cash Balance Benefit Program with respect to the participant.

SEC. 240. Section 26126 of the Education Code is amended to read:

26126. "Employed" or "employment" means employed to perform creditable service subject to coverage under the Cash Balance Benefit Program.

SEC. 241. Section 26127 of the Education Code is amended to read:

26127. "Full time equivalent" means the days or hours of creditable service that a person who is employed on a part-time basis would be required to perform in a school year if he or she were employed full time, as defined by Section 22138.5, in that position.

SEC. 242. Section 26131 of the Education Code is amended to read:

26131. "Minimum interest rate" means the annual rate determined for the plan year by the board by means of an amendment to the plan with respect to the Cash Balance Benefit Program in accordance with applicable federal laws and regulations.

SEC. 243. Section 26132 of the Education Code is amended to read:

26132. "Participant" means a person who has performed creditable service subject to coverage by the Cash Balance Benefit Program, and who has contributions credited under the Cash Balance Benefit Program or is receiving an annuity under the Cash Balance Benefit Program by reason of creditable service.

SEC. 244. Section 26133 of the Education Code is amended to read:

26133. "Pay period" means a payroll period specified by the employer but not more than 31 calendar days.

SEC. 245. Section 26136 of the Education Code is amended to read:

26136. "Retirement" means termination of employment and completion of all conditions precedent to receiving a retirement benefit under the Cash Balance Benefit Program.

SEC. 246. Section 26138 of the Education Code is amended to read:

26138. "Retirement date" means the date the benefit under this part becomes payable to a participant who has applied for a retirement benefit from the plan under this part.

SEC. 247. Section 26139 of the Education Code is amended to read:

26139. (a) "Salary" means remuneration payable in cash by an employer to a participant for creditable service subject to coverage under the Cash Balance Benefit Program. Salary shall include:

(1) Money paid in accordance with a salary schedule based on years of training and years of experience as specified in Section 45028 for creditable service performed.

(2) For participants not paid according to a salary schedule, money paid for creditable service performed.

(3) Money paid for the participant's absence from performance of creditable service as approved by an employer, except as provided in paragraph (5) of subdivision (b).

(4) Employee contributions picked up by an employer under Section 414(h)(2) of Title 26 of the United States Code and Section 17501 of the Revenue and Taxation Code.

(5) Amounts deducted by an employer from the participant's salary, including deductions for participation in a deferred compensation plan; deductions for the purchase of annuity contracts, tax-deferred retirement plans, or other insurance programs; and deductions for participation in a plan that meets the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code.

(6) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(7) Any other payments the board determines by plan amendment to be "salary."

(b) "Salary" does not mean and shall not include:

(1) Money paid for service that is not creditable service.

(2) Money paid by an employer in addition to salary paid under paragraph (1) or (2) if not paid to all employees in a class in the same dollar amount, the same percentage of salary, or the same percentage of the amount being distributed.

(3) Fringe benefits provided by an employer.

(4) Job-related expenses paid or reimbursed by an employer.

(5) Money paid for unused accumulated leave.

(6) Compensatory damages or money paid to a participant in excess of salary as a compromise settlement or as severance pay.

(7) Annuity contracts, tax-deferred retirement programs, or other insurance programs, including, but not limited to, plans that meet the requirements of Section 125, 401(k), or 403(b) of Title 26 of the United States Code that are purchased by an employer for a participant.

(8) Any payments determined by the board to have been made by an employer for the principal purpose of enhancing a participant's benefits under the plan.

(9) Any other payments the board determines by plan amendment not to be "salary."

(c) Any employer or person who knowingly or willfully reports salary in a manner inconsistent with the provisions of subdivisions (a) or (b) shall reimburse the plan for any overpayment of benefits that occurs because of such inconsistent reporting and may be subject to prosecution for fraud, theft, or embezzlement in accordance with provisions of the Penal Code. The system may establish procedures to ensure that salary reported by an employer is in compliance with this section.

(d) This section shall be deemed to have become operative on July 1, 1996.

SEC. 248. Section 26143 of the Education Code is amended to read:

26143. "Termination benefit" means a benefit that is an amount equal to the sum of the participant's employee account and employer account payable under this part pursuant to the provisions of Chapter 13 (commencing with Section 27200).

SEC. 249. Section 26144 of the Education Code is amended to read:

26144. "Total and permanent disability" means any medically determinable physical or mental incapacity that is expected to prevent the participant from performing creditable service under this part for the employer for a continuous period of at least one year.

SEC. 250. Section 26208 of the Education Code is amended to read:

26208. The board shall establish and maintain records and accounts following recognized accounting principles and controls with respect to the Cash Balance Benefit Program.

SEC. 251. Section 26210 of the Education Code is amended to read:

26210. The board has exclusive control of the investment of the Retirement Fund with respect to assets attributed to the Cash Balance Benefit Program. In investing the fund, the board and its officers and employees shall exercise their fiduciary duties set forth in Chapter 4 (commencing with Section 22250) and Chapter 6 (commencing with Section 22350) of Part 13.

SEC. 252. Section 26211 of the Education Code is amended to read:

26211. The board shall acquire the services of an actuary to:

(a) Perform an actuarial investigation of the demographic and economic experience of the Cash Balance Benefit Program at least once every four years and make recommendations to the board for the adoption of actuarial assumptions for the program that are, in the aggregate, reasonably related to the past experience of the program and the actuary's best estimate of the future experience of the program.

(b) Perform an annual actuarial valuation of the assets and liabilities of the plan with respect to the Cash Balance Benefit Program, using the actuarial assumptions adopted by the board.

(c) Recommend to the board all rates and factors necessary to administer the Cash Balance Benefit Program, including, but not limited to, mortality tables, annuity factors, interest rates, additional earnings credits, and employer contribution rates.

(d) Recommend to the board the goal for maintaining a sufficient Gain and Loss Reserve with respect to the Cash Balance Benefit Program, the amount to be transferred to the Gain and Loss Reserve from investment earnings of the plan each year with respect to the Cash Balance Benefit Program, and a strategy for the amortization of any unfunded actuarial obligation.

(e) Recommend to the board transfers of amounts between the Gain and Loss Reserve and the Annuitant Reserve with respect to the Cash Balance Benefit Program.

(f) Perform any other actuarial services that may be required for the administration of the plan with respect to the Cash Balance Benefit Program, as requested by the board.

SEC. 253. Section 26212 of the Education Code is amended to read:

26212. The board shall maintain all data necessary for the actuarial investigation of the demographic and economic experience of the Cash Balance Benefit Program, and for the actuarial valuation of the assets and liabilities of the plan with respect to the Cash Balance Benefit Program.

SEC. 254. Section 26213 of the Education Code is amended to read:

26213. The board shall adopt actuarial assumptions, rates, factors and tables necessary to administer the Cash Balance Benefit Program as an amendment to the plan.

SEC. 255. Section 26216 of the Education Code is amended to read:

26216. The board may administer the Cash Balance Benefit Program through an agreement with a qualified third-party administrator that shall provide custodial, recordkeeping, or other administrative services specified under the agreement.

SEC. 256. Section 26301 of the Education Code is amended to read:

26301. (a) Employers shall report, on a form prescribed by the system, contributions paid on behalf of each participant in each pay period, along with all other information required by the system, no later than 15 calendar days following the last day of the pay period in which the salary was paid, and the report is delinquent immediately thereafter.

(b) The board may assess a penalty against the employer for a report submitted late or in an unacceptable form.

SEC. 257. Section 26301.5 is added to the Education Code, to read:

26301.5. Each employer shall deduct from the salary of participants employed by the employer the participant contributions required by this part and shall remit to the system those contributions

plus the employer contributions required by this part and Section 44987.

SEC. 258. Section 26302 of the Education Code is amended to read:

26302. (a) If more or less than the contributions required by this part are paid to the plan based on salary paid to a participant, proper adjustment shall be made by the employer within 60 days of discovery or of notification by the system, and any contributions deducted in error from the participant's salary shall be returned to the participant by the employer within the same time period.

(b) If a report with respect to the Cash Balance Benefit Program contains erroneous information and the system, acting in good faith, makes a distribution from the Teachers' Retirement Fund with respect to the Cash Balance Benefit Program based on that information, the employer who submitted the report shall reimburse the Retirement Fund in full for the amount of the erroneous disbursement, plus interest on the amount of the erroneous disbursement at the minimum interest rate from the date of disbursement to the date of reimbursement, immediately upon notification by the system.

SEC. 259. Section 26303 of the Education Code is amended to read:

26303. (a) Employers shall transmit to the plan the employee contributions and employer contributions with respect to the Cash Balance Benefit Program for salary paid to each participant during the pay period no later than five working days following the last day of the pay period in which the salary was paid.

(b) Payments shall be delinquent on the sixth working day thereafter, and interest shall begin to accrue at the minimum interest rate from that day until payment is received by the plan. Interest for late payment under this subdivision shall be due from the employer.

SEC. 260. Section 26305 of the Education Code is amended to read:

26305. Upon request of the system, an employer shall provide the system with information regarding the salary paid or to be paid to employees subject to coverage by the Cash Balance Benefit Program in a plan year. The information may include, but shall not be limited to, employment contracts, salary schedules, and minutes from meetings conducted by the governing board of the employer.

SEC. 261. Section 26306 of the Education Code is amended to read:

26306. (a) Upon request by the system, a participant or beneficiary with respect to the Cash Balance Benefit Program shall provide to the system any information affecting his or her status as a participant or beneficiary.

(b) Upon request by the system, the participant shall provide proof of his or her date of birth.

(c) A participant who has not contributed to the Cash Balance Benefit Program during the immediately preceding plan year shall provide the system with his or her current mailing address and beneficiary information.

SEC. 262. Section 26400 of the Education Code is amended to read:

26400. (a) A person employed to perform creditable service for less than 50 percent of the full-time equivalent for the position shall become a participant on the later of the first day on which creditable service is performed for an employer that provides the Cash Balance Benefit Program or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program, provided the person is not subject to mandatory membership in the Defined Benefit Program except as provided in Section 26402.

(b) If the employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect coverage under social security or an alternative retirement plan offered by the employer in addition to the Cash Balance Benefit Program, the employee may elect within 60 calendar days of the later of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program to be covered by social security or to participate in the alternative retirement plan in lieu of participating in the Cash Balance Benefit Program. Any election shall not preclude an employee from participating in the Cash Balance Benefit Program at a later date so long as the Cash Balance Benefit Program is provided by the employer and the employee is eligible to participate in the Cash Balance Benefit Program.

(c) If subdivision (b) is applicable, the employer shall inform employees pursuant to subdivision (c) of Section 26300 of their right to make an election and the election shall be made on a form prescribed by the system and filed with the employer. The election shall become effective on the later of the first day on which creditable service is performed or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(d) If the participant's basis of employment with an employer that provides the Cash Balance Benefit Program changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer and all other employers shall be subject to coverage by the Defined Benefit Plan as of the first day of the pay period in which the change in the participant's basis of employment occurred, except as provided in Section 26402.

SEC. 263. Section 26401 of the Education Code is amended to read:

26401. (a) A member of the Defined Benefit Program who is employed to perform creditable service for less than 50 percent of the full-time equivalent for the position for an employer that provides the Cash Balance Benefit Program may elect to become a participant for creditable service subject to coverage by the Cash Balance Benefit Program for that employer provided that the creditable service is not performed for the same employer with whom the member is also subject to mandatory membership in the Defined Benefit Program.

(b) The election shall be made on a form prescribed by the system and shall be filed with the employer within 60 calendar days of the later of the first day of employment with an employer that provides the Cash Balance Benefit Program, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(c) Employers shall make available to employees specified in subdivision (a) information and forms provided by the system for making an election regarding participation, and shall maintain the written election by the employee in employer files. The election shall become effective on the first day of the month following the month in which the election is made.

(d) If an election is made pursuant to subdivision (a) and the participant's basis of employment with that employer changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer and all other employers shall be subject to coverage by the Defined Benefit Program as of the first day of the pay period in which the change in the participant's basis of employment occurred, except as provided in Section 26402.

SEC. 264. Section 26500 of the Education Code is amended to read:

26500. Acceptance of employment subject to coverage by the Cash Balance Benefit Program constitutes consent to have contributions deducted from the employee's salary as required by Section 26501.

SEC. 265. Section 26502 of the Education Code is amended to read:

26502. Notwithstanding Section 26301.5, the employer may pick up, for the sole purpose of and in accordance with the requirements of Section 414(h)(2) of Title 26 of the United States Code and Section 17501 of the Revenue and Taxation Code, all of the amounts otherwise due as employee contributions, which shall be paid by the

employer in lieu of employee contributions and which shall be deducted from the employee's salary.

SEC. 266. Section 26504 of the Education Code is amended to read:

26504. The employer may enter into a collective bargaining agreement to pay a different employer contribution rate and a different employee contribution rate, provided all of the following conditions are met:

(a) The sum of the employee contributions and employer contributions for each participant shall equal or exceed 8 percent of salary.

(b) The employee contribution rate may exceed the employer contribution rate but in no event shall the employer contribution rate be less than 4 percent.

(c) The employee contribution rate and employer contribution rate shall be the same for each participant employed by the employer.

(d) The employee contribution rate and employer contribution rate shall be in one-quarter percent increments.

(e) The employee contribution rate and employer contribution rate as determined under the collective bargaining agreement shall become effective on the first day of the plan year following notice to the system and remain in effect for at least one plan year. However, the employee contribution rate and the employer contribution rate as determined under the collective bargaining agreement may become effective as of the first day of the plan year in which notice is given if it is provided in the collective bargaining agreement and if a lump-sum contribution is made to the plan equal to the additional employee and employer contributions, if any, that would have been required if the contribution rates were in effect on the first day of the plan year. Interest shall be credited at the minimum interest rate with respect to the lump-sum contribution commencing with the first month the contribution is made.

(f) The employer has filed notice of the employee contribution rate and the employer contribution rate on a form prescribed by the system.

SEC. 267. Section 26505 of the Education Code is amended to read:

26505. If a participant who has retired and is receiving an annuity under the Cash Balance Benefit Program becomes reemployed prior to 60 years of age or becomes reemployed on or after 60 years of age but within one year of his or her retirement date, to perform creditable service subject to coverage by the plan, the annuity shall be terminated, the employee account and the employer account of the participant shall be credited with respective balances that reflect the actuarial equivalent of the participant's retirement benefit as of the date of the reemployment and the Annuitant Reserve shall be reduced by the amount of the credits. If a participant who has retired

and is receiving an annuity under the Cash Balance Benefit Program becomes reemployed on or after age 60 and more than one year after retirement to perform creditable service under the plan, the annuity shall continue and employee contributions and employer contributions for the creditable service shall be made to the plan and shall be credited to new employee and employer accounts established on behalf of the participant.

SEC. 268. Section 26507 of the Education Code is amended to read:

26507. (a) The board may adjust the mandatory employer contribution rate specified under Section 26503 for a fixed period of plan years when it has determined based upon the recommendation of the actuary, that increased contributions are required. The adjustment shall not exceed one-fourth of one percent for any plan year. The mandatory employer contribution rate as adjusted shall not exceed 4.25 percent of salary in any plan year for each participant employed by the employer, except as provided in subdivision (b).

(b) The adjustment to the employer contribution rate specified in subdivision (a) shall be applied to the employer contribution rate specified in a collective bargaining agreement pursuant to Section 26504 and in effect on the first day of the plan year in which the adjustment to the employer contribution rate takes effect.

(c) The adjusted employer contribution rate shall become effective no earlier than the first day of the plan year immediately following adoption by the board.

SEC. 269. Section 26604 of the Education Code is amended to read:

26604. (a) Beginning June 1, 1996, prior to the Cash Balance Plan becoming effective, and each June thereafter, the board, by plan amendment with respect to the Cash Balance Benefit Program, shall declare the minimum interest rate to be used to credit employee accounts and employer accounts with respect to the Cash Balance Benefit Program during the plan year beginning July 1.

(b) Interest shall be computed at the minimum interest rate on the balance of the employee account and the employer account as of the first day of that month. Interest for contributions credited during that month to the respective account shall be computed at the minimum interest rate from the date of deposit. Interest shall be credited to the respective account as of the last day of that month.

(c) Interest shall not be credited to employee accounts and employer accounts that have been transferred to the Annuitant Reserve for payment of an annuity.

SEC. 270. Section 26606 of the Education Code is amended to read:

26606. Any additional earnings credit declared shall be determined as a specified percentage increase in the closing balance of each employee account and employer account with respect to the Cash Balance Benefit Program measured as of the last day of the plan

year. The additional earnings credit shall be credited to employee account and employer account balances as of the date the board declares the additional earnings credit is to be applied. The additional earnings credit shall not be credited to employee accounts and employer accounts that have been transferred to the Annuitant Reserve for payment of an annuity under the Cash Balance Benefit Program.

SEC. 271. Section 26607 of the Education Code is amended to read:

26607. (a) The board may declare by means of plan amendment with respect to the Cash Balance Benefit Program an additional annuity credit applicable to annuities being paid under the Cash Balance Benefit Program.

(b) The declaration authorized by subdivision (a) may be made only when the board by plan amendment with respect to the Cash Balance Benefit Program declares an additional earnings credit as provided in Section 26605 and if the total amount of investment earnings of the plan with respect to the Cash Balance Benefit Program for the plan year exceeds the sum of the total amount required to credit all employee and employer accounts at the minimum interest rate, the administrative costs of the plan with respect to the Cash Balance Benefit Program for the plan year, any addition to be made to the Gain and Loss Reserve under subdivision (c) of Section 26202, the total amount required to credit all employee and employer accounts in respect of the additional earnings credit so declared, and any other obligations incurred by the plan with respect to the Cash Balance Benefit Program.

(c) Any additional annuity credit with respect to the Cash Balance Benefit Program shall be based upon the annuity of the participant or beneficiary for the plan year and shall be paid as a lump sum to the participant or beneficiary on the date specified by the board.

SEC. 272. Section 26800 of the Education Code is amended to read:

26800. The normal retirement age for the Cash Balance Benefit Program is 60 years of age.

SEC. 273. Section 26802 of the Education Code is amended to read:

26802. Distribution of the retirement benefit under this part shall commence no later than the required beginning date specified in subdivision (c) of Section 26004.

SEC. 274. Section 26803 of the Education Code is amended to read:

26803. (a) All creditable service subject to coverage by the Cash Balance Benefit Program and all service with the participant's last employer or employers that is creditable under the Defined Benefit Program shall be terminated prior to the retirement date.

(b) All employers with which the participant is employed to perform creditable service subject to coverage by the plan shall

certify on a form prescribed by the system that the participant's employment has been terminated.

SEC. 275. Section 26804 of the Education Code is amended to read:

26804. Application for a retirement benefit under this part shall be made on a form prescribed by the system.

SEC. 276. Section 26805 of the Education Code is amended to read:

26805. The retirement benefit under this part is a benefit payable in the event of retirement that is an amount equal to the sum of the employee account and the employer account as of the retirement date.

SEC. 277. Section 26806 of the Education Code is amended to read:

26806. The normal form of retirement benefit under this part is a lump-sum payment. Upon distribution of the lump-sum payment to the participant, no further benefits shall be payable from the plan with respect to the Cash Balance Benefit Program.

SEC. 278. Section 26807 of the Education Code is amended to read:

26807. (a) Upon application for a retirement benefit under this part, the participant may elect to receive the retirement benefit in the form of an annuity, provided the sum of the employee account and employer account equals or exceeds three thousand five hundred dollars ($3,500).

(b) The participant may elect one of the following annuity options:

(1) A single life annuity with a cash refund feature, which is the actuarial equivalent of the lump sum payable for the life of the participant with any balance remaining upon the death of the participant payable in a lump sum to the beneficiary.

(2) A single life annuity without a cash refund feature, which is the actuarial equivalent of the lump sum payable for the life of the participant.

(3) A 100-percent joint and survivor annuity, which is the actuarial equivalent of the lump sum payable for the combined lives of the participant and the beneficiary, with the monthly amount payable to the participant continuing to the surviving beneficiary upon the death of the participant. However, if the option beneficiary predeceases the participant, the annuity without modification for the option shall be payable to the participant upon notification to the board and shall commence to accrue to the participant as of the day following the date of death of the option beneficiary. Notification to the board shall include proof of death of the option beneficiary.

(4) A 50-percent joint and survivor annuity, which is the actuarial equivalent of the lump sum payable for the combined lives of the participant and the beneficiary, with one-half of the monthly amount payable to the participant continuing to the surviving beneficiary

upon the death of the participant. However, if the option beneficiary predeceases the participant, the annuity without modification for the option shall be payable to the participant upon notification to the board and shall commence to accrue to the participant as of the day following the date of death of the option beneficiary. Notification to the board shall include proof of death of the option beneficiary.

(5) A period certain annuity, which is the lump sum payable over a specified number of years, from a minimum of three years to a maximum of 10 years but in any event not to exceed the life expectancy of the participant or the life expectancy of the participant and the participant's option beneficiary, until there is no balance remaining in the participant's employee account and employer account.

SEC. 279. Section 26809 of the Education Code is amended to read:

26809. Upon election of an annuity under this part, the credits in the participant's employee account and employer account shall be transferred to the Annuitant Reserve.

SEC. 280. Section 26810 of the Education Code is amended to read:

26810. (a) A participant who is employed to perform creditable service subject to coverage by the Cash Balance Benefit Program while receiving an annuity under the program may voluntarily terminate the annuity upon employment and make contributions to the program based on salary paid by the employer for the employment, provided the participant has attained age 60 and has been receiving a retirement annuity for at least one year. The participant shall continue to be subject to Section 26808.

(b) The participant shall request in writing within 60 days of employment that the annuity be terminated. Termination of the participant's annuity shall become effective on the first day of the month following the month in which verification of the participant's employment is received by the system from the participant's employer.

(c) Upon voluntary termination of the annuity, the employee and employer account of the participant shall be credited with respective balances that reflect the actuarial equivalent of the participant's retirement benefit as of the date the participant terminates the annuity and the Annuitant Reserve shall be reduced by the amount of the credits.

(d) The portion of the annuity derived from the amounts credited to the employee account and employer account, as of the date the participant terminates the annuity, shall be calculated using the actuarial assumptions in effect on the initial retirement date using the age of the participant and, if the participant elected a joint and survivor option the age of the beneficiary on the current retirement date.

(e) Upon election of a subsequent annuity, the credits in the participant's employee account and employer account shall be transferred to the Annuitant Reserve.

SEC. 281. Section 26811 of the Education Code is amended to read:

26811. The beneficiary under the joint and survivor option elected pursuant to paragraph (3) or (4) of subdivision (b) of Section 26807 shall be the person designated by the participant on the application for a retirement benefit under this part, and shall not be changed after the original retirement date unless the beneficiary has predeceased the participant.

SEC. 282. Section 26900 of the Education Code is amended to read:

26900. A participant may apply to receive a disability benefit under this part at any time.

SEC. 283. Section 26901 of the Education Code is amended to read:

26901. Application for a disability benefit under this part shall be made by the participant, or the guardian or conservator of the participant, on a form prescribed by the system.

SEC. 284. Section 26902 of the Education Code is amended to read:

26902. (a) A disability benefit under this part shall become payable only upon determination by the board that the participant has a total and permanent disability. The board shall require current relevant medical reports by licensed practitioners, including the report of the treating physician, and may make any inquiries necessary to the determination of total and permanent disability. Failure of the participant, or the participant's guardian or conservator, to provide any documents, complete any forms, or respond to any questions from the board within 45 days of the request may be cause for rejection of the application.

(b) Upon determination by the board that the participant does not have a total and permanent disability, the application for disability benefit, and any designation of beneficiary for the benefit, shall be automatically canceled.

SEC. 285. Section 26903 of the Education Code is amended to read:

26903. All creditable service subject to coverage by the Cash Balance Benefit Program and Defined Benefit Program shall be terminated prior to the disability date.

SEC. 286. Section 26905 of the Education Code is amended to read:

26905. The normal form of disability benefit under this part is a lump-sum payment. Upon distribution of the lump-sum payment to the participant, no further benefits shall be payable from the Cash Balance Benefit Program.

SEC. 287. Section 26906 of the Education Code is amended to read:

26906. (a) Upon application for a disability benefit under this part, the participant may elect to receive the disability benefit in the form of an annuity provided the sum of the employee account and employer account equals or exceeds three thousand five hundred dollars ($3,500).

(b) The participant may elect one of the following options:

(1) A single life annuity with a cash refund feature, which is the actuarial equivalent of the lump sum payable for the life of the participant with any balance remaining upon the death of the participant payable in a lump sum to the beneficiary.

(2) A single life annuity without a cash refund feature, which is the actuarial equivalent of the lump sum payable for the life of the participant.

(3) A 100-percent joint and survivor annuity, which is the actuarial equivalent of the lump sum payable for the combined lives of the participant and the beneficiary, with the monthly amount payable to the participant continuing to the surviving beneficiary upon the death of the participant. However, if the option beneficiary predeceases the participant, the annuity without modification for the option shall be payable to the participant upon notification to the board and shall commence to accrue to the participant as of the day following the date of death of the option beneficiary. Notification to the board shall include proof of death of the option beneficiary.

(4) A 50-percent joint and survivor annuity, which is the actuarial equivalent of the lump sum payable for the combined lives of the participant and the beneficiary, with one-half of the monthly amount payable to the participant continuing to the surviving beneficiary upon the death of the participant. However, if the option beneficiary predeceases the participant, the annuity without modification for the option shall be payable to the participant upon notification to the board and shall commence to accrue to the participant as of the day following the date of death of the option beneficiary. Notification to the board shall include proof of death of the option beneficiary.

(5) A period certain annuity, which is the lump sum payable over a specified number of years, from a minimum of three years to a maximum of 10 years but in any event not to exceed the life expectancy of the participant or the life expectancy of the participant and the participant's option beneficiary, until there is no balance remaining in the participant's employee account and employer account.

SEC. 288. Section 26908 of the Education Code is amended to read:

26908. Upon election of an annuity under this part, the credits in the participant's employee account and employer account shall be transferred to the Annuitant Reserve.

SEC. 289. Section 26911 of the Education Code is amended to read:

26911. If a participant who is receiving a disability annuity under this part becomes reemployed prior to 60 years of age to perform creditable service subject to coverage by the Cash Balance Benefit Program or the Defined Benefit Program, the disability annuity shall be terminated.

SEC. 290. Section 27001 of the Education Code is amended to read:

27001. Notwithstanding Chapter 3 (commencing with Section 13100) of Part 1 of Division 8 of the Probate Code or any other provision of law to the contrary, the death benefit payable under the Cash Balance Benefit Program may be requested by the beneficiary and paid by the system as soon as practicable after the system receives proof of the participant's death. Except as provided in Section 27302, the death benefit under this part shall be paid no later than December 31 of the calendar year in which the fifth anniversary of the participant's date of death occurs unless the beneficiary is the participant's spouse in which case distributions must commence on or before the later of either of:

(a) December 31 of the calendar year immediately following the calendar year in which the participant dies.

(b) December 31 of the calendar year in which the participant would have attained the age of $70^1/_2$ years.

SEC. 291. Section 27003 of the Education Code is amended to read:

27003. The normal form of death benefit under this part is a lump-sum payment. Upon distribution of the lump-sum payment to the beneficiary, no further benefits shall be payable from the plan with respect to the Cash Balance Benefit Program.

SEC. 292. Section 27006 of the Education Code is amended to read:

27006. Upon the beneficiary's election to receive the death benefit under this part in the form of an annuity, the credits in the participant's employee account and employer account shall be transferred to the Annuitant Reserve.

SEC. 293. Section 27007 of the Education Code is amended to read:

27007. (a) If the participant died while receiving an annuity under this part, the death benefit shall be payable in accordance with the terms of the annuity elected by the participant.

(b) Upon the death of a participant who elected a single life annuity with a cash refund feature under this part, any balance remaining in the participant's employee account and employer account shall be payable in a lump sum to the beneficiary.

(c) Upon the death of a participant who elected a single life annuity without a cash refund feature under this part, no death benefit shall be payable.

(d) Upon the death of a participant who elected a joint and survivor annuity under this part, the annuity shall continue for life to the surviving beneficiary under the joint and survivor option. If the beneficiary under the joint and survivor option has predeceased the participant, no death benefit shall be payable.

(e) Upon the death of a participant who elected a period certain annuity under this part prior to the completion of annuity payments due the participant, any balance remaining in the participant's employee account and employer account shall be payable in a lump sum to the beneficiary.

SEC. 294. Section 27008 of the Education Code is amended to read:

27008. Upon the death of a beneficiary who was receiving an annuity under this part due to the death of a participant, payment shall be made as follows:

(a) Upon the death of a beneficiary under a joint and survivor option, no amount shall be payable.

(b) Upon the death of a beneficiary who elected a single life annuity without a cash refund feature, no amount shall be payable.

(c) Upon the death of a beneficiary who elected a period certain annuity prior to the completion of annuity payments due the beneficiary, any balance remaining in the participant's employee account and employer account shall be payable in a lump sum to the estate of the beneficiary.

SEC. 295. Section 27100 of the Education Code is amended to read:

27100. A participant may at any time designate or change the designation of one or more primary beneficiaries and one or more contingent beneficiaries to receive any lump-sum death benefit that may be payable under the plan. The beneficiary for the lump-sum death benefit under this part may be a person, trust, or the estate of the participant. The beneficiary shall be designated on a form prescribed by the system that is received in the system's office in Sacramento before the participant's death.

SEC. 296. Section 27101 of the Education Code is amended to read:

27101. In the event the participant dies without a valid beneficiary designation on file with the system, any lump-sum death benefit under this part shall be payable to the estate of the participant.

SEC. 297. Section 27200 of the Education Code is amended to read:

27200. Upon termination of all creditable service subject to coverage by the plan under this part and Part 13 (commencing with Section 22000) for any reason other than death, disability, or retirement, a participant may apply for a lump-sum termination benefit under this part which shall be an amount that is equal to the

sum of the participant's employee account and the employer account as of the date the termination benefit is paid.

SEC. 298. Section 27201 of the Education Code is amended to read:

27201. (a) All creditable service subject to coverage by the Cash Balance Benefit Program and all service with the participants' last employer or employers that is creditable service under the Defined Benefit Program shall terminate prior to application for a termination benefit under this part.

(b) All employers with which the participant is employed to perform creditable service subject to coverage by the plan shall certify on a form prescribed by the system that the participant's employment has been terminated.

SEC. 299. Section 27202 of the Education Code is amended to read:

27202. Application for a termination benefit under this part shall be made on an application form prescribed by the system.

SEC. 300. Section 27203 of the Education Code is amended to read:

27203. A participant may not apply for a termination benefit under this part if less than five years have elapsed following the date the most recent termination benefit was distributed to the participant.

SEC. 301. Section 27204 of the Education Code is amended to read:

27204. The termination benefit under this part shall not be payable before one year has elapsed following the date of termination of employment. The application for the termination benefit shall be automatically canceled if the participant performs creditable service within the year following the date of termination of employment.

SEC. 302. Section 27205 of the Education Code is amended to read:

27205. A participant may cancel the application for a termination benefit under this part at any time prior to distribution of the benefit.

SEC. 303. Section 27207 of the Education Code is amended to read:

27207. Upon distribution of the lump-sum payment to the participant under this part, no further benefits shall be payable from the plan under this part.

SEC. 304. Section 27300 of the Education Code is amended to read:

27300. (a) The plan's obligations under this part to a participant or beneficiary who has applied for a benefit cease upon distribution of the lump-sum benefit.

(b) Deposit in the United States mail of a warrant drawn as directed by the participant or beneficiary and addressed as directed by the participant or beneficiary constitutes distribution of the benefits under this part.

(c) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant or beneficiary constitutes distribution of the benefits under this part.

(d) If the participant or beneficiary has elected to transfer all or a specified portion of the lump-sum benefit that is eligible for direct trustee-to-trustee transfer to the trustee of an eligible retirement plan within the meaning of Section 401(a)(31) of Title 26 of the United States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes distribution of the benefits under this part.

(e) Distribution under subdivision (b), (c), or (d) pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the plan from liability for that payment under this part.

SEC. 305. Section 27302 of the Education Code is amended to read:

27302. If a benefit payable under this part cannot be distributed because, after a good faith effort, the participant or beneficiary cannot be located, the balances in the participant's employee account and employer account shall be forfeited by the participant or beneficiary, but if the participant or beneficiary thereafter submits a valid claim to the system the employee and employer accounts shall be reinstated and shall be credited with all applicable interest at the minimum interest rate and additional earnings credit amounts attributable to the period during which the forfeiture was in effect.

SEC. 306. Section 27303 of the Education Code is amended to read:

27303. Any overpayment to a participant or beneficiary under this part shall be deducted from any subsequent benefit payment that may be payable under the plan, except as provided in Section 26302.

SEC. 307. Section 27400 of the Education Code is amended to read:

27400. This chapter establishes the power of a court in a dissolution of marriage or legal separation action with respect to community property rights in benefits under this part and defines the rights of nonparticipant spouses in the Cash Balance Benefit Program.

SEC. 308. Section 27403 of the Education Code is amended to read:

27403. The nonparticipant spouse who is awarded separate nominal accounts pursuant to Section 24702 is not a participant of the Cash Balance Benefit Program. The nonparticipant spouse is entitled only to rights and benefits explicitly established by this chapter.

SEC. 309. Section 27404 of the Education Code is amended to read:

27404. The nonparticipant spouse is entitled to no benefits or rights from the separate nominal accounts except as otherwise provided in this chapter. However, this section shall not be construed to limit any right arising from the accounts of a nonparticipant with respect to the Cash Balance Benefit Program which exists because the nonparticipant spouse is employed to perform creditable service subject to coverage by the program.

SEC. 309.5. Section 27405 of the Education Code is amended to read:

27405. Upon the legal separation or dissolution of marriage of a participant, the court may include in the judgment or court order a determination of the community property rights of the parties in the participant's annuity consistent with this section. Upon election under subparagraph (E) of paragraph (3) of subdivision (a) of Section 2610 of the Family Code, the court order awarding the nonparticipant spouse a community property share in the benefits of a participant receiving an annuity shall be consistent with this section.

(a) If the court does not award the entire annuity to the participant and the participant is receiving an annuity under paragraph (1) or (2) of subdivision (b) of Section 26807, the court shall require only that the system pay from the plan to the nonparticipant spouse, by separate warrant, his or her community property share of the participant's annuity, or the option beneficiary's annuity or both.

(b) The nonparticipant spouse may designate a beneficiary to receive his or her community property share of the participant's annuity.

SEC. 310. Section 27406 of the Education Code is amended to read:

27406. The nonparticipant spouse who is awarded separate nominal accounts with respect to the Cash Balance Benefit Program shall have the right to a lump-sum distribution of amounts credited to the account.

(a) The nonparticipant spouse shall file an application on a form provided by the system to obtain the distribution.

(b) The distribution is effective when the system deposits in the United States mail a warrant drawn in favor of the nonparticipant spouse and addressed to the latest address for the nonparticipant spouse on file with the system. If the nonparticipant spouse has elected on a form provided by the system to transfer all or a specified portion of the accounts that are eligible for direct trustee-to-trustee transfer under Section 401(a)(31) of Title 26 of the United States Code to the trustee of a qualified plan under Section 402 of Title 26 of the United States Code, deposit in the United States mail of a notice that the requested transfer has been made constitutes a distribution of the nonparticipant spouse's credit balance from the separate nominal accounts.

(c) The nonparticipant spouse is deemed to have permanently waived all rights to an annuity when the distribution becomes effective.

(d) The nonparticipant spouse may not cancel a distribution after the distribution is effective.

(e) The nonparticipant spouse shall have no right to elect to redeposit the distribution after the distribution is effective.

SEC. 311. Section 27407 of the Education Code is amended to read:

27407. No judgment or court order issued pursuant to this chapter is binding on the plan with respect to the Cash Balance Benefit Program until the plan has been joined as a party to the action and has been served with a certified copy of the judgment or court order.

SEC. 312. Section 27410 of the Education Code is amended to read:

27410. (a) The nonparticipant spouse who is awarded separate nominal accounts shall have the right to designate, pursuant to Sections 27100 to 27102, inclusive, a beneficiary or beneficiaries to receive the accounts credited to the separate nominal accounts of the nonparticipant spouse on his or her date of death, and any annuity attributable to the separate nominal accounts which is unpaid on the date of the death of the nonparticipant spouse.

(b) This section shall not be construed to provide the nonparticipant spouse with any right to elect a joint and survivor annuity pursuant to paragraphs (3) and (4) of subdivision (b) of Section 26807.

SEC. 313. Section 27411 of the Education Code is amended to read:

27411. The nonparticipant spouse who is awarded a separate nominal account under this part shall have the right to an annuity pursuant to paragraphs (1), (2), or (5) of subdivision (b) of Section 26807.

(a) The nonparticipant spouse shall be eligible for an annuity if the following conditions are satisfied:

(1) The nonparticipant spouse has at least three thousand five hundred dollars ($3,500) in his or her separate nominal accounts.

(2) The nonparticipant spouse has attained the age of 55 years or more.

(b) An annuity of a nonparticipant spouse shall become effective upon any date designated by the nonparticipant spouse, provided:

(1) The requirements of subdivision (a) are satisfied.

(2) The nonparticipant spouse has filed an application for an annuity on a form provided by the system, which is executed no earlier than 90 days before the effective date of the annuity.

SEC. 314. Section 28000 of the Education Code is amended to read:

28000. (a) The Legislature hereby finds and declares its intent to preserve and protect the rights of reemployed participants who have

been absent from a position of employment covered by the Cash Balance Benefit Program to serve in the uniformed services of the United States of America in accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code).

(b) The plan shall comply with Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, as that chapter may be amended from time to time.

(c) The term "service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, and a period for which a participant is absent from a position of employment for the purpose of an examination to determine the fitness of the participant to perform any such duty.

(d) The term "uniformed services" means the Armed Forces of the United States of America, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or emergency.

(e) No entitlement of the right to contribute toward credits under the Cash Balance Benefit Program pursuant to this chapter by the participant as a result of service in the uniformed services shall accrue if the participant does not return to employment with the same employer or employers which employed the participant immediately prior to the eligible period of service in the uniformed services as prescribed in Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code.

SEC. 315. Section 28001 of the Education Code is amended to read:

28001. (a) The participant who returns to employment with the same employer which had employed the participant immediately prior to the eligible period of service in the uniformed services, in accordance with the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall be treated as not having incurred a break in the performance of creditable service by reason of that participant's period or periods of service in the uniformed services. The length of each period of service in the uniformed services shall not exceed five years unless otherwise permitted pursuant to Section 28004. Each period of service in the uniformed services by the participant shall, upon that participant's return to employment with the same employer or employers which had employed the participant immediately prior to the eligible period of service in the uniformed services, constitute employment toward the performance of creditable service provided that participant elects to remit the employee contributions that would

have been made during the period of service in the uniformed services. The remittance of employee contributions shall be calculated pursuant to Sections 26501 and 28003. In no event shall that remittance exceed the amount the participant would have been required to contribute during that period of performance of creditable service had the participant remained continuously employed by the last employer and not served in the uniformed services throughout that period.

(b) Notwithstanding Section 26506, remittance of employee contributions in accordance with subdivision (a) shall be made by the employer pursuant to Section 26502 upon the employer's receipt of written consent of the participant specifying a schedule of repayments. That remittance shall commence during the period beginning with the date of return to employment and may continue for three times the period of the participant's eligible period of service in the uniformed services, not to exceed five years. The plan's receipt of the remittance payments to the plan with respect to the Cash Balance Benefit Program shall be credited pursuant to Chapter 7 of this part. Interest on the payments of remitted employee contributions made for the period of service in the uniformed services shall not be credited in the participant's account until after such payments are received and only prospectively to the participant's account in accordance with Section 26604. Upon receipt of the remittance payments to the plan, the payments shall be subject to the same terms and conditions under the program as if the payments had been employee contributions made by the participant had the participant not served for a period in the uniformed services. In no event shall the current year contributions and contributions made for purposes of purchasing service exceed the maximum exclusion allowance as set forth in the Internal Revenue Code.

SEC. 316. Section 28002 of the Education Code is amended to read:

28002. (a) Except as provided in subdivision (b), an employer reemploying a participant with service subject to the requirements of Chapter 43 (commencing with Section 4301) of Title 38 of the United States Code, shall be liable to remit the employer contributions provided that employer employed the participant immediately prior to the eligible period of service in the uniformed services. That remittance shall exclude interest and the contribution rate by the employer shall be to the same extent as that for contributions to the Cash Balance Benefit Program for other employees during the same period. The employer shall, within 30 days of the date of reemployment, provide information as required by the board, on a form provided by the system, notifying the system of reemployment. Following receipt of that notice, the system shall calculate in accordance with Section 28003 the total amount of employer contributions due for the participant for the full period of service in the uniformed services. Within 60 working days of

notification by the plan of amount due, the employer shall remit to the plan all employer contributions.

(b) The employer shall not be liable for employer contributions for the period of service in the uniformed services if the participant elects not to remit the employee contributions for that period through the employer as required under Section 28001. In the event the participant does not remit all of the employee contributions within the prescribed repayment period, the total amount of the employer contributions shall remain with the plan and credited to the participant's employer account with respect to the Cash Balance Benefit Program.

SEC. 317. Section 28004 of the Education Code is amended to read:

28004. A participant who is absent from a position of employment subject to the Cash Balance Benefit Program due to that participant's service in the uniformed services, shall not be entitled to obtain the right to contribute toward credits under the plan in excess of five years of service in the uniformed services, except for the following reasons:

(a) The participant is required to serve beyond five years to complete an initial period of obligated service in the uniformed services;

(b) The participant was unable to obtain orders releasing the participant from a period of service in the uniformed services before the expiration of the five-year period and that inability was through no fault of the participant;

(c) The participant served in the uniformed services as required pursuant to Section 270 of Title 10, under Section 502(a) or 503 of Title 32 of the United States Code, or to fulfill additional training requirements determined and certified in writing by the Secretary of Defense, to be necessary for professional development, or for completion of skill training or retraining; or

(d) The participant is:

(1) Ordered to or retained on active duty under Section 672(a), 672(g), 673, 673b, 673c, or 688 of Title 10 or under Section 331, 332, 359, 360, 367, or 712 of Title 14 of the United States Code.

(2) Ordered to or retained on active duty, other than for training, under any provision of law during a war or during a national emergency declared by the President or the Congress.

(3) Ordered to active duty, other than for training, in support, as determined by the secretary concerned, of an operational mission for which personnel have been ordered to active duty under Section 673b of Title 10 of the United States Code.

(4) Ordered to active duty in support, as determined by the secretary concerned, of a critical mission or requirement of the uniformed services.

(5) Called into federal service as a participant of the National Guard under Chapter 15 of Title 10 or under Section 3500 or 8500 of Title 10 of the United States Code.

SEC. 318. Section 28005 of the Education Code is amended to read:

28005. A participant's entitlement to the right to contribute toward credits under the Cash Balance Benefit Program pursuant to this chapter by reason of the service in the uniformed services terminates upon the occurrence of any of the following events:

(a) A separation of the participant from the uniformed service with a dishonorable or bad conduct discharge.

(b) A separation of the participant from the uniformed service under other than honorable conditions, as characterized pursuant to regulations prescribed by the secretary concerned.

(c) A dismissal of the participant permitted under Section 1161(a) of Title 10 of the United States Code.

(d) A dropping of the participant from the rolls pursuant to Section 1161(b) of Title 10 of the United States Code.

SEC. 319. Section 28100 of the Education Code is amended to read:

28100. (a) The employer may discontinue providing the Cash Balance Plan at anytime in accordance with the terms and conditions of the employer's governing board's formal action to provide the plan.

(b) The employer shall notify the system of the decision to discontinue the plan no less than 90 calendar days prior to the effective date of discontinuance. Such notice shall be submitted on a form prescribed by the system.

SEC. 320. Section 44929 of the Education Code is amended to read:

44929. (a) Whenever the governing board of a school district or a county office of education, by formal action taken prior to January 1, 1999, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district or county office of education would be served by encouraging the retirement of certificated employees and that the retirement will either: result in a net savings to the district or county office of education; result in a reduction of the number of certificated employees as a result of declining enrollment; or result in the retention of certificated employees who are credentialed to teach in teacher shortage disciplines, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement Defined Benefit Program to a certificated employee pursuant to Section 22714 if all of the following conditions exist:

(1) The employee is credited with five or more years of service under the State Teachers' Retirement Defined Benefit Program and retires during a period of not more than 120 days or less than 60 days,

commencing no sooner than the effective date of the formal action of the district or county superintendent of schools that shall specify the period.

(2) The district or county office of education transmits to the retirement fund an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22714 and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Sections 24414 and 24415. The transfer to the retirement fund shall be made in a manner, and time period that shall not exceed four years, that is acceptable to the Teachers' Retirement Board. The school district or county office of education shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22714.

(3) The district or county office of education transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(4) The governing board of the school district or the county office of education has considered the availability of teachers to fill the positions that would be vacated pursuant to this section.

(b) (1) The school district shall demonstrate and certify to the county superintendent that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction of the number of certificated employees as a result of declining enrollment, as computed pursuant to Section 42238.5; or (C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The county superintendent shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502. A district that qualifies under clause (B) of paragraph (1) shall also certify that it qualifies as a declining enrollment district as computed pursuant to Section 42238.5.

(3) The school district shall reimburse the county superintendent for all the costs of the county superintendent that result from the certification.

(c) (1) The county office of education shall demonstrate and certify to the Superintendent of Public Instruction that the formal

action taken would result in either: (A) a net savings to the county office of education; (B) a reduction of the number of certificated employees as a result of declining enrollment; or (C) the retention of certificated employees who are credentialed to teach in teacher shortage disciplines.

(2) The Superintendent of Public Instruction shall certify to the Teachers' Retirement Board that a result specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (b) of Section 14502.

(3) The Superintendent of Public Instruction may request reimbursement from the county office of education for all administrative costs that result from the certification.

(d) The service credit made available pursuant to this section shall be available to all members employed by the school district or county office of education who meet the conditions set forth in this section.

(e) The amount of service credit shall be two years.

(f) Any employee who retires with service credit granted under this section and Section 22714 and who subsequently reinstates, shall forfeit the service credit granted under this section and Section 22714.

(g) This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement Defined Benefit Program.

SEC. 321. Section 87488 of the Education Code is amended to read:

87488. (a) Whenever the governing board of a community college district, by formal action taken prior to January 1, 1999, determines that because of impending curtailment of or changes in the manner of performing services, the best interests of the district would be served by encouraging the retirement of academic employees and that the retirement will either: result in a net savings to the district; result in a reduction of the number of academic employees as a result of declining enrollment; or result in the retention of faculty who are qualified to teach in areas of teacher shortage, including, but not limited to, mathematics and science, an additional two years of service shall be credited under the State Teachers' Retirement Defined Benefit Program to an academic employee pursuant to Section 22714 if all of the following conditions exist:

(1) The employee is credited with five or more years of service under the State Teachers' Retirement Defined Benefit Program and retires during a period not more than 120 days or less than 60 days,

commencing no sooner than the effective date of the formal action of the district that shall specify the period.

(2) The governing board transmits to the retirement fund an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the allowance the member receives after the receipt of service credit under this section and Section 22714 and the amount the member would have received without the service credit and an amount determined by the Teachers' Retirement Board that equals the actuarial equivalent of the difference between the purchasing power protection supplemental payment the member receives after receipt of additional service credit pursuant to this section and the amount the member would have received without the additional service credit. The payment for purchasing power shall be deposited in the Supplemental Benefit Maintenance Account established by Section 22400 and shall be subject to Sections 24414 and 24415. The transfer to the retirement fund shall be made in a manner and in a time period that shall not exceed four years, that is acceptable to the Teachers' Retirement Board. The community college district shall make the payment with respect to all eligible employees who retired pursuant to this section and Section 22714.

(3) The governing board transmits to the retirement fund the administrative costs incurred by the State Teachers' Retirement System in implementing this section, as determined by the Teachers' Retirement Board.

(4) The governing board of the community college district has considered the availability of academic employees to fill the positions that would be vacated pursuant to this section.

(b) (1) The community college district shall demonstrate and certify to the chancellor's office that the formal action taken would result in either: (A) a net savings to the district; (B) a reduction in the number of academic employees as a result of declining enrollment, as computed pursuant to subdivision (c) of Section 84701; or (C) the retention of faculty who are qualified to teach in teacher shortage disciplines.

(2) The chancellor shall certify to the Teachers' Retirement Board that the results specified in paragraph (1) can be demonstrated. The certification shall include, but not be limited to, the information specified in subdivision (c) of Section 84040.5. A community college district that qualifies under clause (B) of paragraph (1) shall also certify that it qualifies as a declining enrollment district as computed pursuant to subdivision (c) of Section 84701.

(3) The chancellor may request reimbursement from the community college district for all administrative costs that result from the certification.

(c) The service credit made available pursuant to this section shall be available to all members employed by the community college district who meet the conditions set forth in this section.

(d) The amount of service credit shall be two years.

(e) Any employee who retires with service credit granted under this section and Section 22714 and subsequently reinstates, shall forfeit the service credit granted under this section and Section 22714.

(f) This section shall not be applicable to any employee otherwise eligible if the employee receives any unemployment insurance payments arising out of employment with an employer subject to Part 13 (commencing with Section 22000) during a period extending one year beyond the effective date of the formal action, or if the employee is not otherwise eligible to retire for service under the State Teachers' Retirement Defined Benefit Program.

SEC. 322. Section 2610 of the Family Code is amended to read:

2610. (a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether public or private, including all survivor and death benefits, including, but not limited to, any of the following:

(1) Order the disposition of any retirement benefits payable upon or after the death of either party in a manner consistent with Section 2550.

(2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.

(3) Upon the agreement of the nonemployee spouse, order the division of accumulated community property contributions and service credit as provided in the following or similar enactments:

(A) Article 1.2 (commencing with Section 21215) of Chapter 9 of Part 3 of Division 5 of Title 2 of the Government Code.

(B) Chapter 12 (commencing with Section 22650) of Part 13 of the Education Code.

(C) Article 8.4 (commencing with Section 31685) of Chapter 3 of Part 3 of Division 4 of Title 3 of the Government Code.

(D) Article 2.5 (commencing with Section 75050) of Chapter 11 of Title 8 of the Government Code.

(E) Chapter 15 (commencing with Section 27400) of Part 14 of the Education Code.

(4) Order a retirement plan to make payments directly to a nonmember party of his or her community property interest in retirement benefits.

(b) A court shall not make any order that requires a retirement plan to do either of the following:

(1) Make payments in any manner that will result in an increase in the amount of benefits provided by the plan.

(2) Make the payment of benefits to any party at any time before the member retires, except as provided in paragraph (3) of subdivision (a), unless the plan so provides.

(c) This section shall not be applied retroactively to payments made by a retirement plan to any person who retired or died prior to January 1, 1987, or to payments made to any person who retired or died prior to June 1, 1988, for plans subject to paragraph (3) of subdivision (a).

SEC. 323. Section 3543.2 of the Government Code is amended to read:

3543.2. (a) The scope of representation shall be limited to matters relating to wages, hours of employment, and other terms and conditions of employment. "Terms and conditions of employment" mean health and welfare benefits as defined by Section 53200, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for the evaluation of employees, organizational security pursuant to Section 3546, procedures for processing grievances pursuant to Sections 3548.5, 3548.6, 3548.7, and 3548.8, the layoff of probationary certificated school district employees, pursuant to Section 44959.5 of the Education Code, and alternative compensation or benefits for employees adversely affected by pension limitations pursuant to Section 22316 of the Education Code, to the extent deemed reasonable and without violating the intent and purposes of Section 415 of the Internal Revenue Code. In addition, the exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law. All matters not specifically enumerated are reserved to the public school employer and may not be a subject of meeting and negotiating, provided that nothing herein may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside the scope of representation.

(b) Notwithstanding Section 44944 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding causes and procedures for disciplinary action, other than dismissal, including a suspension of pay for up to 15 days, affecting certificated employees. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 44944 of the Education Code shall apply.

(c) Notwithstanding Section 44955 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding procedures and criteria for the layoff of certificated employees for lack of funds. If the public school employer and the exclusive representative do not

reach mutual agreement, then the provisions of Section 44955 of the Education Code shall apply.

(d) Notwithstanding Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon request of either party, meet and negotiate regarding the payment of additional compensation based upon criteria other than years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code shall apply.

(e) Pursuant to Section 45028 of the Education Code, the public school employer and the exclusive representative shall, upon the request of either party, meet and negotiate a salary schedule based on criteria other than a uniform allowance for years of training and years of experience. If the public school employer and the exclusive representative do not reach mutual agreement, then the provisions of Section 45028 of the Education Code requiring a salary schedule based upon a uniform allowance for years of training and years of experience shall apply. A salary schedule established pursuant to this subdivision shall not result in the reduction of the salary of any teacher.

SEC. 324. Section 22009.03 of the Government Code is amended to read:

22009.03. "Public agency" also includes a school district, a county superintendent of schools, and a regional occupational center or program established pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1, with respect to employees eligible for membership in the State Teachers' Retirement System.

This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 325. Section 22009.1 of the Government Code is amended to read:

22009.1. "Retirement system" includes:

(a) A pension, annuity, retirement or similar fund or system established by a public agency and covering only positions of that agency.

(b) The Public Employees' Retirement System with respect only to employees of the state and employees of the University of California in positions covered by that system.

(c) The Public Employees' Retirement System with respect to employees of all school districts in positions covered under each contract entered into by a county superintendent of schools and the system.

(d) The State Teachers' Retirement System with respect to all employees in positions subject to coverage under the Defined Benefit Program system except employees of a public agency having any employees in positions covered by such system who are also in

positions covered by a local retirement system for the retirement of teachers, or for membership in which public school teachers are eligible, operated by city, city and county, county or other public agency or combination of public agencies of the state.

(e) The Legislators' Retirement System with respect to all employees in positions covered by that system.

(f) The Judges' Retirement System with respect to all employees in positions covered by that system.

(g) The University of California Retirement System only with respect to all employees in positions covered by that system.

(h) The San Francisco City and County Employees' Retirement System with respect to all employees in positions covered by that system.

(i) Any other retirement system with respect only to employees of any two or more of the public agencies having employees in positions covered by such system, as designated by the board and with regard to which the board authorizes conduct of a referendum.

(j) Any retirement system with respect only to employees of a hospital which is an integral part of a city incorporated between January 15, 1898 and July 15, 1898 in positions covered by the system, as designated by the board on request of the city.

(k) Except as otherwise provided in subdivisions (b) through (j) above, any retirement system with respect to employees of each of the public agencies having employees in positions covered by the system.

(*l*) Each division or part of a retirement system, as defined in subdivisions (a), (b), (c), (e), (g), (h), (i), (j), (k), and (m) of this section, which is divided pursuant to this chapter into two parts:

(1) The part composed of the positions of members of such system who desire coverage under the federal system.

(2) The part composed of the positions of members of such system who do not desire coverage under the federal system.

(m) The State Teachers' Retirement System with respect to all employees of each public agency, as defined by Section 22009.03, in positions covered by that system. This subdivision shall become inoperative on July 1, 2004.

SEC. 326. Section 22156 of the Government Code is amended to read:

22156. (a) A division of the State Teachers' Retirement System is hereby authorized by the Legislature to provide Medicare coverage for employees of a public agency as defined in Section 22009.03, upon the request of the public agency.

(b) The division authorized by subdivision (a) shall be conducted pursuant to this article.

(c) A member of the State Teachers' Retirement System on whose behalf a request is made pursuant to subdivision (a), may elect to be covered by Medicare, pursuant to Section 218 of the federal Social Security Act (42 U.S.C. Sec. 418), and applicable federal regulations

if (1) the member was employed in a position covered by the system on March 31, 1986, and (2) the member has not since been mandated into Medicare coverage due to the enactment of Public Law 99-272, and (3) the member is in a position covered or the member is eligible to elect to be covered by the retirement system on the date of the division.

(d) The public agency shall, immediately after the elections authorized in subdivision (b) have been made, make application pursuant to Chapter 2 (commencing with Section 22200) of this part for Medicare coverage for those members who have elected to receive Medicare coverage.

(e) The effective date of the coverage may be retroactive a maximum of five years but not earlier than January 1, 1987.

(f) This section shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 327. Section 22208 of the Government Code is amended to read:

22208. With respect to each retirement system coverage group, the legislative or governing body of every public agency having employees in positions covered by a retirement system, may, upon the affirmative vote of a majority of eligible retirement system employees of the retirement system coverage group at a referendum conducted in accordance with Article 2 (commencing with Section 22300) of this chapter and the rules and regulations promulgated by the board pursuant to this part, make formal application to the board for the inclusion of the employees in each retirement system coverage group in the agreement. With respect to employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, the formal application shall be deemed to be made, if made prior to July 1, 2004, by the legislative or governing body of a public agency as defined in Section 22009.03, or if on or after July 1, 2004, by the Teachers' Retirement Board.

SEC. 328. Section 22302 of the Government Code is amended to read:

22302. In the case of employees in positions covered by the retirement system set forth in subdivision (d) of Section 22009.1, if prior to July 1, 2004, the legislative or governing body of a public agency as defined in Section 22009.03, or if on or after July 1, 2004, the Teachers' Retirement Board shall conduct the referendum; if the referendum is authorized by the Legislature.

In the case of employees in positions covered by the retirement system set forth in subdivision (g) of Section 22009.1 the board shall authorize the referendum upon the request of the regents of the University of California and the regents shall conduct the referendum.

SEC. 329. Sections 56, 57, 58, 256, 262, 263, 266, 312, and 319 of this act shall not become operative if SB 2085 of the 1997–98 Regular Session is enacted prior to this act and amends Sections 22601.5, 22602, 22604, 26301, 26400, 26401, 26504, 27410, and 28100 of the Education Code, in which case Sections 11, 12, 13, 40, 42, 43, 50, 51, 64, and 66 of SB 2085 of the 1997–98 Regular Session shall be given effect and Sections 56, 57, 58, 256, 263, 266, 312, and 319 of this act shall be repealed on January 1, 1999.

SEC. 330. Section 72.5 of this act shall only become operative if SB 2126 of the 1997–98 Regular Session is enacted, in which case Section 72 of this act shall not become operative and shall be repealed on January 1, 1999. If SB 2126 of the 1997–98 Regular Session is not enacted, then Section 72.5 shall not become operative and shall be repealed on January 1, 1999 and Section 72 shall become operative.

SEC. 331. Section 132.5 of this bill incorporates amendments to Section 23203 of the Education Code proposed by both this bill and SB 2126. 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 23203 of the Education Code, and (3) this bill is enacted after SB 2126, in which case Section 132 of this bill shall not become operative.

SEC. 332. Section 309.5 of this act shall become operative only if SB 2085 of the 1997–98 Regular Session is not enacted. If SB 2085 of the 1997–98 Regular Session is enacted, Section 309.5 shall not become operative and shall be repealed on January 1, 1999.

CHAPTER 966

An act to amend Section 24202 of, and to add Section 24202.5 to, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. The Legislature finds and declares that:

(a) The class size reduction program has increased the need for experienced teachers.

(b) The first bill signed into law during the 1997–98 Regular Session was Assembly Bill 18 (Chapter 1 of the Statutes of 1997) which modified the State Teachers' Retirement Law to encourage already-retired teachers to return to teach under the class size reduction program.

(c) The State Teachers' Retirement Fund is now virtually fully funded, and in a better position to fund benefit increases without impact on the General Fund as never before.

(d) An April 1998 independent study commissioned by the State Teachers' Retirement System, "Evaluating Adequacy, Competitive Position and Suggested Plan Changes" noted that:

(1) The State Teachers' Retirement System is not competitive when compared to the retirement systems for teachers in other western states;

(2) That other teachers' retirement systems and the Public Employees' Retirement System provide larger benefits at age 65; and

(3) That increasing the age factor for teaching after age 60 would facilitate both teacher retention and making the teaching profession more attractive to prospective teachers.

In enacting this act, it is the intent of the Legislature to provide a retirement increase to State Teachers' Retirement System members which will ameliorate the teacher shortage, increase the attractiveness of teaching in California, provide State Teachers' Retirement System members with better parity to other public retirement systems without a cost to the General Fund, and provide better retirement benefits for teachers who have devoted many years to the education of children.

SEC. 2. Section 24202 of the Education Code is amended to read:

24202. (a) A member who retires for service after June 30, 1972, shall receive a retirement allowance consisting of both of the following:

(1) An annual allowance payable in monthly installments, upon retirement at normal retirement age but less than age $60^{1}/_{4}$, equal to 2 percent of the final compensation for each year of credited service. If the member's retirement is effective at less than normal retirement age and between early retirement age and normal retirement age, the member's allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month that will elapse until the member will attain normal retirement age.

(2) An annuity that shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account at the time of retirement.

(b) In computing the amounts described in subdivision (a), the age of the member on the last day of the month in which the retirement allowance begins to accrue or such later date as provided in Section 24204 shall be used.

(c) The amendments to this section during the 1997–98 Regular Session of the Legislature shall not apply to state employees.

SEC. 3. Section 24202.5 is added to the Education Code, to read:

24202.5. (a) A member who retires for service on or after January 1, 1999, shall receive a retirement allowance consisting of all of the following:

(1) An annual allowance payable in monthly installments, upon retirement equal to the percentage of the final compensation set forth opposite the member's age at retirement in the following table multiplied by each year of credited service:

Age at Retirement	Percentage
60	2.00
60 1/4	2.033
60 1/2	2.067
60 3/4	2.10
61	2.133
61 1/4	2.167
61 1/2	2.20
61 3/4	2.233
62	2.267
62 1/4	2.30
62 1/2	2.333
62 3/4	2.367
63 and over	2.40

(2) If the member's retirement is effective at less than normal retirement age and between early retirement age and normal retirement age, the member's allowance shall be reduced by one-half of 1 percent for each full month, or fraction of a month that will elapse until the member will attain normal retirement age.

(3) An annuity that shall be the actuarial equivalent of the accumulated annuity deposit contributions standing to the credit of the member's account at the time of retirement.

(b) In computing the amounts described in subdivision (a), the age of the member on the last day of the month in which the retirement allowance begins to accrue or the later date as provided in Section 24204 shall be used.

SEC. 4. It is the intent of the Legislature that the benefit improvements enacted by this act be funded pursuant to the amendments to Section 22955 proposed by Assembly Bill 2804 of the 1997–98 Regular Session unless provided otherwise.

SEC. 5. This bill shall become operative only if Assembly Bill 1102, Assembly Bill 2804, and Senate Bill 1528 are all also enacted and become operative.

CHAPTER 967

An act to amend Sections 22951 and 22955 of, and to repeal Section 22952 of, the Education Code, relating to public retirement systems, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. (a) The Legislature finds and declares that:

(1) There have been many recent research studies which indicate that in future years California will face a significant shortage of qualified teachers.

(2) It is in the best public policy interest of the people of California that the Legislature act aggressively to insure that the conditions of employment for teachers are conducive to the growth of the work force.

(3) A substantive and sound retirement plan is a critical aspect of creating a stable and secure employment environment for the teaching profession.

(4) Since its inception the State Teachers' Retirement System has been in an underfunded status. While the State Teachers' Retirement System has been underfunded, there have been no significant increases in retirement benefits for teachers. Instead, teachers and other interested parties have worked in a collaborative effort with the Legislature to ensure that the system become fully funded.

(5) Pursuant to Section 22955 of the Education Code, the Legislature has required the General Fund to contribute 4.3 percent of prior year teacher payroll to be deposited in the Teachers' Retirement Fund for the purpose of accomplishing full funding of the State Teachers' Retirement System.

(6) A recent study by the State Teachers' Retirement System revealed that retirement benefits for California teachers lag behind those of other states.

(7) The most recent valuation by the State Teachers' Retirement System has indicated that the system is approaching full-funding and should reach that goal within the next three years.

(8) It is therefore appropriate that the Legislature continue to provide the funding designated by Section 22955 of the Education Code to improve benefits for the past, present, and future members of the State Teachers' Retirement System to ensure the proper growth and stability of the teaching work force in the State of California.

(b) In enacting this act, it is the intent of the Legislature to:

(1) Provide California teachers with retirement benefits which are competitive with other states.

(2) Provide a final compensation benefit which best reflects the highest earnings of State Teachers' Retirement System members and is commensurate with the benefit which is predominantly applicable to other public employees in the State of California.

(3) Provide a cost-of-living adjustment that is compounded annually.

(4) Provide appropriate early retirement incentives which allow work force flexibility for school districts and options for teachers who desire to leave the profession early.

(5) Ensure that teachers who have devoted their lives to the education of the children of California receive health benefits upon retirement.

(6) Provide retirement options which encourage mature and experienced teaching professionals to continue their careers after normal retirement age.

SEC. 2. Section 22951 of the Education Code is amended to read:

22951. In addition to any other contributions required by this part, employers shall, on account of liability for benefits pursuant to Section 22717, contribute monthly to the Teachers' Retirement Fund 0.25 percent of the creditable compensation upon which members' contributions are based.

SEC. 3. Section 22952 of the Education Code is repealed.

SEC. 4. Section 22955 of the Education Code is amended to read:

22955. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 3.102 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments.

(b) Notwithstanding Section 13340 of the Government Code, commencing October 1, 1998, a continuous appropriation, in addition to the appropriation made by subdivision (a), is hereby annually made from the General Fund to the Controller for transfer to the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 0.524 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based, to be calculated annually on October 1, and shall be divided into four equal quarterly payments. The percentage shall be adjusted to reflect the contribution required to fund the normal cost deficit or the unfunded obligation as determined by the board based upon a recommendation from its actuary. If a rate increase is required, the adjustment may be for no more than 0.25 percent per year and in no case may the transfer made pursuant to this subdivision exceed 1.505 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based. At any time when there is neither an unfunded obligation nor a normal cost deficit, the percentage shall be reduced to zero.

The funds transferred pursuant to this subdivision shall first be applied to eliminating on or before June 30, 2027, the unfunded actuarial liability in the fund identified in the actuarial valuation as of June 30, 1997.

(c) For the purposes of this section, the term "normal cost deficit" means the difference between the normal cost rate as determined in the actuarial valuation required by Section 22226 and the total of the member contribution rate required under Section 22804 and the employer contribution rate required under Section 23400, and shall exclude (1) the portion for unused sick leave service granted pursuant to Section 22719, and (2) the cost of benefit increases which occur after July 1, 1990. The contribution rates prescribed in Section 22804 and Section 23400 on July 1, 1990, shall be utilized to make the calculations. The normal cost deficit shall then be multiplied by the total of the creditable compensation upon which member contributions are based to determine the dollar amount of the normal cost deficit for the year.

(d) Pursuant to Section 22001 and the case law, the members are entitled to a financially sound retirement system. It is the intent of the Legislature that this section shall provide the retirement fund stable and full funding over the long term.

(e) This section continues in effect but in a somewhat different form, fully performs, and does not in any way unreasonably impair, the contractual obligations determined by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

(f) Subdivision (b) shall not be construed to be applicable to any unfunded liability resulting from any benefit increase or change in contribution rate that occurs after July 1, 1990.

(g) The amendments to this section during the 1991–92 Regular Session shall be construed and implemented to be in conformity with the judicial intent expressed by the court in California Teachers' Association v. Cory, 155 Cal. App. 3d 494.

SEC. 5. This act shall become operative only if Assembly Bill 1102, Assembly Bill 1150, and Senate Bill 1528 of the 1997–98 Regular Session of the Legislature are all enacted and become operative.

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

In order for enhanced retirement benefits to be available to members of the State Teachers' Retirement System at the commencement of the school year, this act must take effect immediately.

CHAPTER 968

An act to add Section 22226 to the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 22226 is added to the Education Code, to read:

22226. (a) The board shall conduct a study on providing health insurance benefits, including vision and dental care benefits, for active, disabled, and retired members, beneficiaries, children, and dependent parents. The health insurance may include vision and dental care.

(b) The study shall include, but not be limited to, assessing the lack of access of health insurance benefits for retired teachers and shall evaluate the following:

(1) The demand for health insurance benefits.

(2) The integration of health insurance benefits and Medicare coverage.

(3) The manner in which health insurance benefits would be administered and provided.

(c) There is hereby appropriated from the Teachers' Retirement Fund to the State Teachers' Retirement Board the sum of two hundred thousand dollars ($200,000) conduct a study for the purposes identified in this section. If this study results in the implementation of health insurance benefits as described in subdivision (a), the State Teachers' Retirement Board shall reimburse the sum of two hundred thousand dollars ($200,000) to the Teachers' Retirement Fund from administrative fees charged to recipients of the health insurance benefits.

CHAPTER 969

An act to amend Sections 6125, 6126, 6127, 6128, and 6129 of, and to add Sections 5066, 6126.1, and 6126.2 to, the Penal Code, relating to the office of the Inspector General, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 5066 is added to the Penal Code, to read:

5066. The Director of Corrections shall expand the existing prison ombudsman program to ensure the comprehensive deployment of ombudsmen throughout the state prison system with specific focus on the maximum security institutions. The director shall submit a

report to the chairs of the appropriate fiscal and policy committees on the Legislature by February 1, 1999, outlining the plans for implementation of this section.

SEC. 2. Section 6125 of the Penal Code is amended to read:

6125. There is hereby created the independent office of the Inspector General, which shall not be a subdivision of any other governmental entity. The Governor shall appoint the Inspector General, subject to Senate confirmation of that appointment.

SEC. 3. Section 6126 of the Penal Code is amended to read:

6126. (a) Inspector General shall be responsible for reviewing departmental policy and procedures for conducting investigations and audits of investigatory practices and other audits and investigations of the Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board, or the Board of Corrections, as requested by either the Secretary of the Youth and Adult Correctional Agency or a Member of the Legislature, pursuant to the approval of the Inspector General under policies to be developed by the Inspector General.

(b) Upon completion of an investigation or audit, the Inspector General shall provide a response to the requester.

(c) In the accomplishment of investigatory audits, the Inspector General shall also identify areas of full and partial compliance, and noncompliance, with departmental investigatory policies and procedures, specify deficiencies in the completion and documentation of investigatory processes, and recommend corrective actions, including, but not limited to, additional training with respect to investigative policies.

SEC. 4. Section 6126.1 is added to the Penal Code, to read:

6126.1. (a) In consultation with the Commission on Correctional Peace Officer Standards and Training and the Inspector General, the Youth and Adult Correctional Agency shall establish a certification program for investigators under the jurisdiction of the Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms. The investigators' training course shall be consistent with the standard courses utilized by other major investigative offices, such as county sheriff and city police departments and the California Highway Patrol.

(b) Beginning January 1, 1999, all internal affairs investigators conducting investigations for the office of the Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms shall complete the investigation training and be certified within six months of employment.

(c) Beginning January 1, 1999, all internal affairs investigators shall successfully pass a psychological screening exam before becoming employed with the office of the Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, or the Board of Prison Terms.

SEC. 5. Section 6126.2 is added to the Penal Code, to read:

6126.2. The Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms shall not hire as an internal affairs investigator any person known to be directly or indirectly involved in an open internal affairs investigation being conducted by any federal, state, or local law enforcement agency or the Inspector General.

SEC. 6. Section 6127 of the Penal Code is amended to read:

6127. (a) The Department of Corrections, the Department of the Youth Authority, the Board of Prison Terms, the Youthful Offender Parole Board,the Board of Corrections, the Narcotic Addict Evaluation Authority, the Prison Industry Authority, and the Youth and Adult Correctional Agency shall comply with all requests of the Inspector General for any document or record contained on any medium. The Inspector General shall be deemed to be a department head for the purpose of Section 11189 of the Government Code in connection with any investigation or audit conducted pursuant to this chapter.

(b) The Inspector General may require any employee of either department to be interviewed on a confidential basis. Any employee so requested shall comply and shall have time afforded by the appointing authority for the purpose of an interview with the Inspector General or his or her designee. Any record created by an interview shall be deemed confidential for use by the Inspector General and the Secretary of the Youth and Adult Correctional Agency only. It is not the purpose of these communications to address disciplinary action or grievance procedures that may routinely occur.

SEC. 7. Section 6128 of the Penal Code is amended to read:

6128. (a) The office of the Inspector General may receive communications from any individual, including those employed by any department, board, or authority who believes he or she may have information that may describe a variance from departmental investigatory policies and procedures. The identity of the person providing the information shall be held as confidential by the Inspector General and may be disclosed only to the secretary or the Governor, or the appropriate director or chair, in confidence or a law enforcement agency in the furtherance of their duties. It is not the purpose of these communications to redress any single disciplinary action or grievance that may routinely occur.

(b) In order to properly respond to any allegation of improper governmental activity, the Inspector General shall establish a toll-free public telephone number for the purpose of identifying any alleged wrongdoing by an employee of any public safety department, board, or authority. This telephone number shall be posted throughout all state public safety departments, boards, and authorities in clear view of all employees and the public. When appropriate, the Inspector General shall initiate an investigation or audit of any alleged wrongdoing. However, any request to conduct an investigation shall be in writing. The request shall be confidential and is not subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) The identity of the person providing the information that initiated the investigation shall not be disclosed without the person's written permission, except to a law enforcement agency in the furtherance of its duties.

SEC. 8. Section 6129 of the Penal Code is amended to read:

6129. (a) Any state employee at any rank and file, supervisory, or managerial level who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee of either department for having disclosed what the employee, in good faith, believed to be improper activities shall be disciplined by adverse action as provided in Section 19572 of the Government Code. If no adverse action is instituted by the appointing power, the State Personnel Board shall invoke adverse action as provided in Section 19583.5 of the Government Code.

(b) In addition to all other penalties provided by law, any state employee at any rank and file, supervisory, or managerial level who intentionally engages in acts of reprisal, retaliation, threats, coercion, or similar acts against an employee of either department for having disclosed what the employee, in good faith, believed to be improper activities shall be liable in an action for damages brought against him or her by the injured party. Punitive damages may be awarded by the court if the acts of the offending party are proven to be malicious. If reliability has been established, the injured party also shall be entitled to reasonable attorney's fees as provided by law.

(c) The Inspector General, the Youth and Adult Correctional Agency, the Department of the Youth Authority, the Department of Corrections, the Board of Corrections, the Youthful Offender Parole Board, and the Board of Prison Terms shall refer matters involving criminal conduct to the proper law enforcement authorities in the appropriate jurisdiction for further action. The entity making a referral to the local district attorney shall also notify the Attorney General of the action. If the local district attorney refuses to accept the case, he or she shall notify the referring entity who shall subsequently refer the matter to the Attorney General. If the local district attorney has not acted on the matter, the referring entity shall

notify the Attorney General. It is the intent of the Legislature that the Department of Justice avoid any conflict of interest in representing the State of California in any civil litigation that may arise in a case in which an investigation has been or is currently being conducted by the Bureau of Investigation by contracting when necessary for private counsel.

SEC. 9. Notwithstanding any other provision of law, the Controller, at the request of the Department of Finance, shall transfer positions and funds from the Youth and Adult Correctional Agency, Item 0550-001-0001 of the Budget Act of 1998, to the Department of Corrections and the Department of the Youth Authority for internal affairs operations.

SEC. 10. All funds appropriated and positions created for support of the office of the Inspector General in Item 0550-001-0001 of the Budget Act of 1998 shall be transferred upon approval of the Department of Finance to the office of the Inspector General as established pursuant to Section 1 of this act.

SEC. 11. Notwithstanding any provision of law, the Department of Corrections, the Department of the Youth Authority, and the office of the Inspector General shall submit a deficiency request to the Department of Finance pursuant to Section 27 of the Budget Act of 1998.

CHAPTER 970

An act to amend Sections 130, 472.5, 2639, 2640, 2655.11, 2655.91, 2661.7, 2665, 2688, 2760.1, 2762, 2984, 3452, 6980.28, 7215.6, 7410, 7411, 7413, 7417, 7503.14, 7558.5, 7560, 7582.26, 7585.20, 7586.2, 7586.5, 7587.8, 7593.12, 7598.7, 7602, 7606, 7607, 7608, 7610, 7616.2, 7618, 7619.2, 7621, 7625, 7626, 7626.5, 7628, 7629, 7631, 7632, 7634, 7635, 7640, 7641, 7642, 7643, 7646, 7647, 7647.5, 7650, 7661, 7662, 7664, 7665, 7666, 7667, 7668, 7669, 7670, 7685.2, 7685.3, 7686, 7686.5, 7687, 7690, 7693, 7696, 7697, 7700, 7701, 7702, 7704, 7706, 7708, 7709, 7711, 7715, 7718.5, 7725, 7725.2, 7725.5, 7727, 7735, 7737.3, 7737.5, 7740, 7740.5, 8556, 9604, 9605, 9630, 9631, 9650, 9650.1, 9650.2, 9650.3, 9650.4, 9651, 9652, 9652.1, 9653, 9654, 9655, 9656, 9656.1, 9656.2, 9656.3, 9656.4, 9656.5, 9657, 9658, 9659, 9662, 9675, 9676, 9677, 9678, 9679, 9680, 9681, 9682, 9683, 9684, 9686, 9700, 9700.5, 9700.6, 9701, 9702.1, 9702.2, 9702.5, 9703, 9704, 9705, 9709, 9710, 9711, 9712, 9713, 9714, 9715, 9716, 9717, 9718, 9719, 9720, 9726, 9727, 9727.1, 9727.2, 9728, 9729, 9730, 9731, 9735, 9736, 9737, 9740, 9741, 9742, 9746, 9749.5, 9751, 9752, 9753, 9754, 9755, 9756, 9758, 9759, 9760, 9761, 9762, 9763, 9764, 9765, 9766, 9767, 9769, 9780, 9781, 9782, 9783, 9784, 9785, 9786, 9787, 9789, 9880.2, 9884, 9884.3, 9886.2, and 9889.8 of, to amend the heading of Article 2 (commencing with Section 7615) of Chapter 12 of Division 3 of, to add Sections 142, 7601, 9625, 9656.45, and 9884.5 to, to repeal Sections 7412, 7431.5, 7603, 7604, 7605, 7607.5,

7663, 7687.5, 9626, 9626.5, 9627, 9628, 9629, 9630.5, and 18740 of, to repeal Article 10 (commencing with Section 9889.30) of Chapter 20.3 of Division 3 of, and to repeal and add Section 9603 of, the Business and Professions Code, and to amend Section 15633.5 of the Welfare and Institutions Code, relating to professions and vocations.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. 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) Funeral Directors and Embalmers Program.
(16) Board of Behavioral Science Examiners.
(17) Structural Pest Control Board.
(18) Cemetery Program.
(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. 2. Section 142 is added to the Business and Professions Code, to read:

142. This section shall apply to the bureaus and programs under the direct authority of the director, and to any board that, with the prior approval of the director, elects to have the department

administer one or more of the licensing services set forth in this section.

(a) Notwithstanding any other provision of law, each bureau and program may synchronize the renewal dates of licenses granted to applicants with more than one license issued by the bureau or program. To the extent practicable, fees shall be prorated or adjusted so that no applicant shall be required to pay a greater or lesser fee than he or she would have been required to pay if the change in renewal dates had not occurred.

(b) Notwithstanding any other provision of law, the abandonment date for an application that has been returned to the applicant as incomplete shall be 12 months from the date of returning the application.

(c) Notwithstanding any other provision of law, a delinquency, penalty, or late fee shall be assessed if the renewal fee is not postmarked by the renewal expiration date.

SEC. 3. Section 472.5 of the Business and Professions Code is amended to read:

472.5. The New Motor Vehicle Board in the Department of Motor Vehicles shall, in accordance with the procedures prescribed in this section, administer the collection of fees for the purposes of fully funding the administration of this chapter.

(a) Fees collected pursuant to this section shall be deposited in the Certification Account in the Consumer Affairs Fund and shall be available, upon appropriation by the Legislature, exclusively to pay the expenses incurred by the department in administering this chapter and to pay the New Motor Vehicle Board as provided in Section 3016 of the Vehicle Code. If, at the conclusion of any fiscal year, the amount of fees collected exceeds the amount of expenditures for that purpose during that fiscal year, the surplus in the Certification Account shall be carried over into the succeeding fiscal year.

(b) Beginning July 1, 1988, and on or before May 1 of each calendar year thereafter, every manufacturer shall file with the New Motor Vehicle Board a statement of the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year, and shall, upon written notice delivered to the manufacturer by certified mail, return receipt requested, pay to the New Motor Vehicle Board a fee, not to exceed one dollar ($1) for each motor vehicle sold, leased, or distributed by or for the manufacturer in this state during the preceding calendar year. The total fee paid by each manufacturer shall be rounded to the nearest dollar in the manner described in Section 9559 of the Vehicle Code. Not more than one dollar ($1) shall be charged, collected, or received from any one or more manufacturers pursuant to this subdivision with respect to the same motor vehicle.

(c) (1) The fee required by subdivision (b) is due and payable not later than 30 days after the manufacturer has received notice of the

amount due and is delinquent after that time. A penalty of 10 percent of the amount delinquent shall be added to that amount, if the delinquency continues for more than 30 days.

(2) If a manufacturer fails to file the statement required by subdivision (b) by the date specified, the New Motor Vehicle Board shall assess the amount due from the manufacturer by using as the number of motor vehicles sold, leased, or otherwise distributed by or for the manufacturer in this state during the preceding calendar year the total number of new registrations of all motor vehicles sold, leased, or otherwise distributed by or for the manufacturer during the preceding calendar year.

(d) On or before February 1 of each year, the department shall notify the New Motor Vehicle Board of the dollar amount necessary to fully fund the program established by this chapter during the following fiscal year. The New Motor Vehicle Board shall use this information in calculating the amounts of the fees to be collected from manufacturers pursuant to this section.

(e) For purposes of this section, "motor vehicle" means a new passenger or commercial motor vehicle of a kind that is required to be registered under the Vehicle Code, but the term does not include a motorcycle, a motor home, or any vehicle whose gross weight exceeds 10,000 pounds.

(f) The New Motor Vehicle Board may adopt regulations to implement this section. The regulations shall include, at a minimum, a formula for calculating the fee, established pursuant to subdivision (b), for each motor vehicle and the total amount of fees to be collected from each manufacturer.

(g) Any revenues already received by the Arbitration Certification Program and deposited in the Vehicle Inspection and Repair Fund for the 1991–92 fiscal year that have not yet been spent shall be deposited into the Certification Account in the Consumer Affairs Fund.

SEC. 4. Section 2639 of the Business and Professions Code is amended to read:

2639. Every graduate of an approved physical therapist education program who has filed a complete application for licensure with the board for the first time may, following receipt of a letter of authorization to perform as a "physical therapist license applicant," perform as a physical therapist under the direct and immediate supervision of a physical therapist licensed in this state pending the results of the first licensing examination administered for which he or she is eligible following graduation from an approved physical therapist education program. During this period the applicant shall identify himself or herself only as a "physical therapist license applicant." If the applicant passes the examination, the physical therapist license applicant status shall remain in effect until a regular renewable license is issued, or licensure is denied, by the board. If the applicant fails the licensing examination, or if he or she passes the

examination but licensure is denied, the applicant shall be prohibited from performing as a physical therapist license applicant at any time in the future.

A person shall not be considered a graduate unless he or she has successfully completed all the clinical training and internships required for graduation from the program.

If the applicant fails to take the next succeeding examination without due cause or fails to pass the examination or receive a license, all privileges under this section shall terminate upon notice by certified mail, return receipt requested. An applicant may only qualify once to perform as a physical therapist license applicant.

SEC. 5. Section 2640 of the Business and Professions Code is amended to read:

2640. (a) If the board uses computer administered testing for the administration of the licensing examination, this section shall apply and Section 2639 shall not apply.

(b) Every graduate of an approved physical therapist education program who has filed a complete application for licensure with the board for the first time may, following receipt of a letter of authorization to take the licensing examination and perform as a "physical therapist license applicant," perform as a physical therapist under the direct and immediate supervision of a physical therapist licensed in this state, for 90 days pending the results of the first licensing examination administered. During this period, the applicant shall identify himself or herself only as a "physical therapist license applicant." If the applicant passes the examination, the physical therapist license applicant status shall remain in effect until a regular renewable license is issued, or licensure is denied, by the board.

(c) A person shall not be considered a graduate unless he or she has successfully completed all the clinical training and internships required for graduation from the program.

(d) If the applicant fails to take the examination within 90 days or fails to pass the examination or receive a license, all privileges under this section shall terminate. An applicant may only qualify once to perform as a physical therapist license applicant.

SEC. 6. Section 2655.11 of the Business and Professions Code is amended to read:

2655.11. A person holding an approval as a physical therapist assistant issued by the board may use the title "physical therapist assistant" or "physical therapy assistant" or the letters "P.T.A." or any other words, letters, or figures that indicate that the person is an approved physical therapist assistant. No other person shall be so designated or shall use the term "physical therapist assistant" or "P.T.A." The approval as a physical therapist assistant shall not authorize the use of the prefix "L.P.T.," "R.P.T.," "P.T.," or "Dr." or the title "physical therapist," "doctor," or any suffix or affix indicating

or implying that the physical therapist assistant is a physical therapist or a doctor.

SEC. 7. Section 2655.91 of the Business and Professions Code is amended to read:

2655.91. Every graduate of an approved physical therapist assistant education program who has filed a complete physical therapist assistant application with the board for the first time may, following receipt of a letter of authorization to perform as a "physical therapist assistant applicant" from the board, assist in the provision of physical therapy under the direct and immediate supervision of a licensed physical therapist pending the results of the first examination administered for which he or she is eligible following graduation from an approved physical therapist assistant education program. If the applicant passes the examination, the physical therapist assistant applicant status shall remain in effect until a regular renewable approval is issued, or approval is denied, by the board. If the applicant fails the examination, or if he or she passes the examination but approval is denied, the applicant shall be prohibited from performing as a physical therapist assistant applicant at any time in the future.

During this period the applicant shall identify himself or herself only as a "physical therapist assistant applicant."

If a person assisting in the provision of physical therapy pursuant to this section fails to take the next succeeding examination without due cause or fails to pass the examination or receive approval, all privileges under this section shall terminate upon notice by certified mail, return receipt requested. An applicant may only qualify once to perform as a physical therapist assistant applicant.

A student is not eligible to work as a physical therapist assistant applicant until successful completion of the clinical experience required for graduation from the program.

SEC. 8. Section 2661.7 of the Business and Professions Code is amended to read:

2661.7. (a) A person whose license or approval has been revoked or suspended, or who has been placed on probation, may petition the Physical Therapy Board of California for reinstatement or modification of penalty, including modification or termination of probation, after a period of not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action:

(1) At least three years for reinstatement of a license or approval revoked for unprofessional conduct, except that the board may, for good cause shown, specify in a revocation order that a petition for reinstatement may be filed after two years.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license or approval revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts as may be required by the board. The petition shall be accompanied by at least two verified recommendations from physical therapists licensed by the board who have personal knowledge of the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board. The board may assign the petition to an administrative law judge designated in Section 11371 of the Government Code. After a hearing on the petition, the administrative law judge shall provide a proposed decision to the committee that shall be acted upon in accordance with the Administrative Procedure Act.

(d) The board or the administrative law judge hearing the petition, may consider all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the license was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability. The hearing may be continued, as the administrative law judge designated in Section 11371 of the Government Code finds necessary.

(e) The administrative law judge designated in Section 11371 of the Government Code when hearing a petition for reinstating a license or approval, or modifying a penalty, may recommend the imposition of any terms and conditions deemed necessary.

(f) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny, without a hearing or argument, any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(g) Nothing in this section shall be deemed to alter Sections 822 and 823.

SEC. 9. Section 2665 of the Business and Professions Code is amended to read:

2665. Each diversion evaluation committee has the following duties and responsibilities:

(a) The evaluation of physical therapists and physical therapist assistants who request participation in the program and the consideration of any recommendations from professional consultants on the admission of applicants to the diversion program.

(b) The review and designation of treatment facilities to which physical therapists and physical therapist assistants in the diversion program may be referred.

(c) The receipt and review of information concerning physical therapists and physical therapist assistants participating in the program.

(d) Calling meetings as necessary to consider the requests of physical therapists and physical therapist assistants to participate in the diversion program, to consider reports regarding participants in the program, and to consider any other matters referred to it by the board.

(e) The consideration of whether each participant in the diversion program may with safety continue or resume the practice of physical therapy.

(f) Setting forth in writing a treatment program for each participant in the diversion program with requirements for supervision and surveillance.

(g) Holding a general meeting at least twice a year, which shall be open and public, to evaluate the diversion program's progress, to prepare reports to be submitted to the board, and to suggest proposals for changes in the diversion program.

(h) For the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, any member of a diversion evaluation committee shall be considered a public employee. No board or diversion evaluation committee member, contractor, or agent thereof, shall be liable for any civil damage because of acts or omissions which may occur while acting in good faith in a program established pursuant to this article.

SEC. 10. Section 2688 of the Business and Professions Code, as added by Section 12 of Chapter 830 of the Statutes of 1996, is amended to read:

2688. The amount of fees provided in connection with licenses or approvals for the practice of physical therapy is as follows:

(a) The application fee for a physical therapist's license shall be established by the board at not more than seventy-five dollars ($75). The application fee for an applicant under Section 2653 shall be established by the committee at not more than one hundred twenty-five dollars ($125).

(b) The examination and reexamination fees for the physical therapist examination, physical therapist assistant examination, and the examination to demonstrate knowledge of the rules and regulations related to the practice of physical therapy shall be the actual cost to the board of the development and writing of, or purchase of the examination, and grading of each written examination, plus the actual cost of administering each examination.

(c) The initial license fee for a physical therapist license shall be fixed by the examining board at not more than one hundred fifty dollars ($150).

(d) The renewal fee for a physical therapist license shall be fixed by the examining board at not more than one hundred fifty dollars ($150).

(e) A fee to be set by the board of not more than seventy-five dollars ($75) shall be charged for each application for approval as a physical therapist assistant.

(f) A fee to be set by the examining board of not more than one hundred fifty dollars ($150) shall be charged for the issuance of and for the renewal of each approval as a physical therapist assistant.

(g) Notwithstanding Section 163.5, the delinquency fee shall be 50 percent of the renewal fee in effect.

(h) The duplicate wall certificate fee shall not exceed twenty dollars ($20). The duplicate renewal receipt fee shall not exceed twenty dollars ($20).

(i) The endorsement or letter of good standing fee is thirty dollars ($30).

(j) The amount of any fee established by statute or by the board pursuant to statutory authority that is in effect when this section becomes operative on January 1, 1999, pursuant to subdivision (k), shall remain in effect after that operative date, unless the board establishes a fee amount that is less or greater than the previously established fee amount as permitted by law.

(k) This section shall become operative on January 1, 1999.

SEC. 11. Section 2760.1 of the Business and Professions Code is amended to read:

2760.1. (a) A registered nurse whose license has been revoked, or suspended or who has been placed on probation may petition the board for reinstatement or modification of penalty, including reduction or termination of probation, after a period not less than the following minimum periods has elapsed from the effective date of the decision ordering that disciplinary action, or if the order of the board or any portion of it is stayed by the board itself or by the superior court, from the date the disciplinary action is actually implemented in its entirety:

(1) Except as otherwise provided in this section, at least three years for reinstatement of a license that was revoked, except that the board may, in its sole discretion, specify in its order a lesser period of time provided that the period shall be not less than one year.

(2) At least two years for early termination of a probation period of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The board shall give notice to the Attorney General of the filing of the petition. The petitioner and the Attorney General shall be given timely notice by letter of the time and place of the hearing on the petition, and an opportunity to present both oral and documentary evidence and argument to the board. The petitioner shall at all times have the burden of proof to establish by clear and convincing evidence that he or she is entitled to the relief sought in the petition.

(c) The hearing may be continued from time to time as the board deems appropriate.

(d) The board itself shall hear the petition and the administrative law judge shall prepare a written decision setting forth the reasons supporting the decision.

(e) The board may grant or deny the petition, or may impose any terms and conditions that it reasonably deems appropriate as a condition of reinstatement or reduction of penalty.

(f) The petitioner shall provide a current set of fingerprints accompanied by the necessary fingerprinting fee.

(g) No petition shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole, or subject to an order of registration pursuant to Section 290 of the Penal Code. No petition shall be considered while there is an accusation or petition to revoke probation pending against the petitioner.

(h) Except in those cases where the petitioner has been disciplined for violation of Section 822, the board may in its discretion deny without hearing or argument any petition that is filed pursuant to this section within a period of two years from the effective date of a prior decision following a hearing under this section.

SEC. 12. Section 2762 of the Business and Professions Code is amended to read:

2762. In addition to other acts constituting unprofessional conduct within the meaning of this chapter it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof.

(d) Be committed or confined by a court of competent jurisdiction for intemperate use of or addiction to the use of any of the substances

described in subdivisions (a) and (b) of this section, in which event the court order of commitment or confinement is prima facie evidence of such commitment or confinement.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

SEC. 12.5. Section 2984 of the Business and Professions Code is amended to read:

2984. Except as provided in Section 2985, a license which has expired may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the board and payment of the renewal fee in effect on the last regular renewal date. If the license is renewed after its expiration, the licensee, as a condition precedent to renewal, shall also pay the prescribed delinquency fee, if any. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the expiration date provided in Section 2982 which next occurs after the effective date of the renewal, when it shall expire and become invalid if it is not again renewed.

SEC. 13. Section 3452 of the Business and Professions Code is amended to read:

3452. Except as otherwise provided in this chapter, an expired license may be renewed at any time within three years after its expiration on filing of an application for renewal on a form prescribed by the committee, and payment of all accrued and unpaid renewal fees. If the license is renewed after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in effect through the date provided in Section 3451 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

SEC. 13.3. Section 6980.28 of the Business and Professions Code is amended to read:

6980.28. A locksmith license not renewed within three years following its expiration may not be renewed thereafter. Renewal of the license within three years, or issuance of an original license thereafter, shall be subject to payment of any and all fines assessed by the chief or the director which are not pending appeal and all other applicable fees.

SEC. 13.5. Section 7215.6 of the Business and Professions Code is amended to read:

7215.6. (a) In order to provide a procedure for the resolution of disputes between guide dog users and guide dog schools relating to the continued physical custody and use of a guide dog, in all cases except those in which the dog user is the unconditional legal owner of the dog, the following arbitration procedure shall be established as a pilot project.

(b) This procedure establishes an arbitration panel for the settlement of disputes between a guide dog user and a licensed guide dog school regarding the continued use of a guide dog by the user in all cases except those in which the dog user is the unconditional legal owner of the dog. The disputes which may be subject to this procedure concern differences between the user and school over whether or not a guide dog should continue to be used, differences between the user and school regarding the treatment of a dog by the user, and differences over whether or not a user should continue to have custody of a dog pending investigation of charges of abuse. It specifically does not address issues such as admissions to schools, training practices, or other issues relating to school standards.

(c) The licensed guide dog schools in California and the board shall provide to guide dog users graduating from guide dog programs in these schools a new avenue for the resolution of disputes which involve continued use of a guide dog, or the actual physical custody of a guide dog. Guide dog users who are dissatisfied with decisions of schools regarding continued use of guide dogs may appeal to the board to convene an arbitration panel composed of all of the following:

(1) One person designated by the guide dog user.

(2) One person designated by the licensed guide dog school.

(3) A representative of the board who shall coordinate the activities of the panel and serve as chair.

(d) If the guide dog user or guide dog school wishes to utilize the arbitration panel, this must be stated in writing to the board. The findings and decision of the arbitration panel shall be final and binding.

(e) A licensed guide dog school which fails to comply with any provision of this section shall automatically be subject to a penalty of two hundred fifty dollars ($250) per day for each day in which a violation occurs. The penalty shall be paid to the board. The license of a guide dog school shall not be renewed until all penalties have been paid.

The fine shall be assessed without advance hearing, but the licensee may apply to the board for a hearing on the issue of whether the fine should be modified or set aside. This application shall be in writing and shall be received by the board within 30 days after service of notice of the fine. Upon receipt of this written request, the board shall set the matter for hearing within 60 days.

(f) As a general rule, custody of the guide dog shall remain with the guide dog user pending a resolution by the arbitration panel. In

circumstances where the immediate health and safety of the guide dog user or guide dog is threatened, the licensed school may take custody of the dog at once. However, if the dog is removed from the user's custody without the user's concurrence, the school shall provide to the board the evidence which caused this action to be taken at once and without fail; and within five calendar days a special committee of two members of the board shall make a determination regarding custody of the dog pending hearing by the arbitration panel.

(g) The arbitration panel shall decide the best means to determine final resolution in each case. This shall include, but is not limited to, a hearing of the matter before the arbitration panel at the request of either party to the dispute, an opportunity for each party in the dispute to make presentations before the arbitration panel, examination of the written record, or any other inquiry as will best reveal the facts of the disputes. In any case, the panel shall make its findings and complete its examination within 45 calendar days of the date of filing the request for arbitration, and a decision shall be rendered within 10 calendar days of the examination.

All arbitration hearings shall be held at sites convenient to the parties and with a view to minimizing costs. Each party to the arbitration shall bear its own costs, except that the arbitration panel, by unanimous agreement, may modify this arrangement.

(h) The board may study the effectiveness of the arbitration panel pilot project in expediting resolution and reducing conflict in disputes between guide dog users and guide dog schools and may share its findings with the Legislature upon request.

(i) This section shall cease to be operative on July 1, 2002, and as of January 1, 2003, is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 14. Section 7410 of the Business and Professions Code is amended to read:

7410. Persons to whom a notice of violation or a citation is issued and an administrative fine assessed may appeal the citation to a disciplinary review committee established by regulation by the director. All appeals shall be submitted in writing to the program within 30 days of the date the citation was issued. Appeals of citations that are not submitted in a timely manner shall be rejected.

After a timely appeal has been filed with the program, the administrative fine, if any, shall be stayed until the appeal has been adjudicated.

Persons appealing a citation, or their appointed representatives, shall appear in person before the disciplinary review committee. The appellant may present written or oral evidence relating to the facts and circumstances relating to the citation that was issued. Following an appeal before a disciplinary review committee, the disciplinary review committee shall issue a decision, based on findings of fact, which may affirm, reduce, dismiss, or alter any charges filed in the

citation. In no event shall the administrative fine be increased. The appellant shall be provided with a written copy of the disciplinary review committee's decision relating to the appeal.

SEC. 15. Section 7411 of the Business and Professions Code is amended to read:

7411. Persons receiving a decision from a disciplinary review committee may appeal the decision by filing a written request, within 30 days after receipt of the decision, to the program administrator. Following a hearing to appeal the decision of a disciplinary review committee, the director shall thereafter issue a decision, based on findings of fact, affirming, modifying or vacating the citation or penalty, or directing other appropriate relief. In no event shall the administrative fine be increased. The hearing to contest the decision of a disciplinary review committee shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the director shall have all powers granted therein.

SEC. 16. Section 7412 of the Business and Professions Code is repealed.

SEC. 17. Section 7413 of the Business and Professions Code is amended to read:

7413. Appeals of citations not filed in a timely manner or failure of the appellant or the appellant's representative to appear before the disciplinary review committee at the appointed time except when good cause is shown, shall cause the citation to become final and there shall be no administrative appeal except as otherwise provided by law.

SEC. 17.5. Section 7417 of the Business and Professions Code is amended to read:

7417. Except as otherwise provided in this article, a license that has expired for failure of the licensee to renew within the time fixed by this article may be renewed at any time within five years following its expiration upon application and payment of all accrued and unpaid renewal fees and delinquency fees. If the license is renewed after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee and meet current continuing education requirements, if applicable, prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, or on the date on which the accrued renewal fees are paid, or on the date on which the delinquency fee, if any, is paid, whichever occurs last. If so renewed, the license shall continue in effect through the expiration date provided in this article which next occurs following the effective date of the renewal, when it shall expire if it is not again renewed.

SEC. 18. Section 7431.5 of the Business and Professions Code is repealed.

SEC. 18.1. Section 7503.14 of the Business and Professions Code is amended to read:

7503.14. A repossession agency license which is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

The holder of the repossession agency license may obtain a new license only upon compliance with all of the provisions of this chapter relating to the issuance of an original license.

SEC. 18.2. Section 7558.5 of the Business and Professions Code is amended to read:

7558.5. Except as otherwise provided in this article, an expired license or branch office certificate may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the director, and payment of the renewal fee in effect on the last preceding regular renewal date. If the license or certificate is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed in this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license or certificate shall continue in effect through the date provided in Section 7558 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

Renewal of a license or certificate shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

SEC. 18.3. Section 7560 of the Business and Professions Code is amended to read:

7560. A license or branch office certificate which is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

The holder of the license or certificate may obtain a new license or certificate only on compliance with all of the provisions of this chapter relating to the issuance of an original license or certificate.

SEC. 18.5. Section 7582.26 of the Business and Professions Code is amended to read:

7582.26. (a) Any licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or district attorney, or his or her representative, any information he or she may acquire as to any criminal offense, but he or she shall not divulge to any other person, except as he or she may be required by law so to do, any information acquired by him or her except at the direction of the employer or client for whom the information was obtained.

(b) No licensee or officer, director, partner, manager, or employee of a licensee shall knowingly make any false report to his or her employer or client for whom information was being obtained.

(c) No written report shall be submitted to a client except by the licensee, qualifying manager, or a person authorized by one or either of them, and the person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct.

(d) No licensee, or officer, director, partner, manager, or employee of a licensee, shall use a title, or wear a uniform, or use an insignia, or use an identification card, or make any statement with the intent to give an impression that he or she is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(e) No licensee, or officer, director, partner, manager, or employee of a licensee, shall enter any private building or portion thereof, except premises commonly accessible to the public, without the consent of the owner or of the person in legal possession thereof.

(f) No private patrol licensee, or officer, director, partner, manager, or employee of a private patrol licensee shall use or wear a badge, except while engaged in guard or patrol work and while wearing a distinctive uniform. A private patrol licensee, or officer, director, partner, manager, or employee of a private patrol licensee wearing a distinctive uniform shall wear a patch on each shoulder of his or her uniform that reads "private security" and that includes the name of the private patrol company by which the person is employed or for which the person is a representative and a badge or cloth patch on the upper left breast of the uniform. All patches and badges worn on a distinctive uniform shall be of a standard design approved by the director and shall be clearly visible.

(g) No licensee shall permit an employee or agent in his or her own name to advertise, engage clients, furnish reports or present bills to clients, or in any manner whatever conduct business for which a license is required under this chapter. All business of the licensee shall be conducted in the name of and under the control of the licensee.

(h) No licensee shall use a fictitious name in connection with the official activities of the licensee's business.

(i) No private patrol operator licensee or officer, director, partner, or manager of a private patrol operator licensee, or person required to be registered as a security guard pursuant to this chapter shall use or wear a baton or exposed firearm as authorized by this chapter unless he or she is wearing a uniform which complies with the requirements of Section 7582.27.

SEC. 18.6. Section 7585.20 of the Business and Professions Code is amended to read:

7585.20. (a) A firearms training facility certificate, a firearms training instructor certificate, a baton training facility certificate, or a baton training instructor certificate which expires on or after January 1, 1985, shall be placed on a cyclical renewal and shall expire two years following the date of issuance or assigned renewal date. In

order to implement the cyclical renewal, the population of licensees mentioned in this section shall be divided into 24 equal groups, the licenses of each group to expire on the last day of each successive month. Notwithstanding any other provision of law, the bureau shall have authority to extend or shorten the first term of licensure following January 1, 1985, and to prorate the required license fee in order to implement this cyclical renewal. To renew an unexpired certificate, the certificate holder shall apply for renewal on a form prescribed by the director and pay the renewal fee prescribed by this chapter.

(b) If renewal is granted, evidence of renewal of the certificate that the director may prescribe shall be issued to the certificate holder.

(c) In the event the certificate holder fails to renew his or her training facility certificate, the certificate shall be automatically canceled, but may be reinstated within three years of the date of cancellation upon application for reinstatement and upon the payment of the reinstatement fee provided by this chapter. In the event the certificate holder fails to renew his or her training instructor certificate, the certificate shall be automatically canceled, but may be reinstated within 30 days of the date of cancellation upon application for reinstatement and upon the payment of the reinstatement fee provided by this chapter. Reinstatement of a canceled certificate shall not prohibit the bringing of disciplinary proceedings for any act committed in violation of this chapter during the period the certificate is canceled.

(d) A firearms training facility, a firearms training instructor, a baton training facility, or a baton training instructor whose certificate has not been renewed may obtain a new license only upon compliance with all of the provisions of this article relating to the issuance of an original certificate.

(e) A firearms training facility, firearms training instructor, baton training facility, or a baton training instructor certificate shall not be renewed until any and all fines assessed pursuant to Section 7587.7 and not resolved in accordance with the provisions of that section have been paid.

SEC. 18.7. Section 7586.2 of the Business and Professions Code is amended to read:

7586.2. Except as otherwise provided in this article, an expired license or branch office certificate may be renewed at any time within three years after its expiration on filing of application for renewal on a form prescribed by the director, and payment of the renewal fee in effect on the last preceding regular renewal date. If the license or certificate is renewed more than 30 days after its expiration, the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed in this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or

on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license or certificate shall continue in effect through the date provided in Section 7586 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

Renewal of a license or certificate shall not prohibit the bringing of disciplinary proceedings for an act committed before the effective date of the renewal.

SEC. 18.8. Section 7586.5 of the Business and Professions Code is amended to read:

7586.5. A license or branch office certificate which is not renewed within three years after its expiration may not be renewed, restored, reinstated, or reissued thereafter.

The holder of the license or certificate may obtain a new license or certificate only on compliance with all of the provisions of this chapter relating to the issuance of an original license or certificate.

SEC. 19. Section 7587.8 of the Business and Professions Code is amended to read:

7587.8. The director may assess fines for the following acts pursuant to Article 4 (commencing with Section 7583) only as follows:

(a) Violation of subdivisions (a), (b), and (c) of Section 7583.2; twenty-five dollars ($25) per violation.

(b) Violation of subdivision (e) of Section 7583.2; fifty-seven dollars ($57) for each violation.

(c) Violation of subdivisions (g) and (h) of Section 7583.2; twenty-five dollars ($25) for the first violation and one hundred dollars ($100) per violation for each violation thereafter.

(d) Violation of subdivision (d) of Section 7583.2; one hundred dollars ($100) per violation.

(e) Violation of subdivision (f) of Section 7583.2; two hundred fifty dollars ($250) per violation.

SEC. 19.5. Section 7593.12 of the Business and Professions Code is amended to read:

7593.12. An alarm company operator's license not renewed within three years following its expiration may not be renewed thereafter. Renewal of the license within one year, or issuance of an original license thereafter, shall be subject to payment of any and all fines assessed pursuant to Section 7591.9 and not resolved in accordance with the provisions of that section and payment of all applicable fees.

SEC. 20. Section 7598.7 of the Business and Professions Code is amended to read:

7598.7. (a) Except as provided in subdivision (b), an employee of a licensee may be assigned to work with a temporary application for registration until the bureau issues a registration card or denies the application for registration. A temporary application for registration shall be a copy of the initial application. Any alarm agent

employee assigned to work must carry either a temporary application for registration or a valid registration. A temporary application for registration shall in no event be valid for more than 120 days. However, the director may extend the expiration date beyond the 120 days if there is an abnormal delay in processing applications for registration. For purposes of this section, the 120-day period shall commence on the date the applicant signs and submits the application.

(b) Notwithstanding subdivision (a), an employee who has been convicted of a crime prior to applying for registration shall not be issued a temporary application for registration and shall not be assigned to work as an alarm agent until the bureau issues a permanent registration card. This subdivision shall apply only if the applicant for registration has disclosed the conviction to the bureau on his or her application form, or if the fact of the conviction has come to the attention of the bureau through official court or other governmental documents.

SEC. 21. Section 7601 is added to the Business and Professions Code, to read:

7601. The following terms as used in this chapter shall have meanings expressed in this section:

(a) "Department" means the Department of Consumer Affairs.

(b) "Director" means the Director of Consumer Affairs.

(c) "Program" means the Funeral Directors and Embalmers Program.

SEC. 22. Section 7602 of the Business and Professions Code is amended to read:

7602. There is in the department the Funeral Directors and Embalmers Program, under the supervision and control of the director.

The director may appoint a chief at a salary to be fixed and determined by the director, with the approval of the Director of Finance. The duty of enforcing and administering this chapter is vested in the chief, and he or she is responsible to the director therefor. The chief shall serve at the pleasure of the director.

Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy director or by the chief, subject to such conditions and limitations as the director may prescribe.

SEC. 23. Section 7603 of the Business and Professions Code is repealed.

SEC. 24. Section 7604 of the Business and Professions Code is repealed.

SEC. 25. Section 7605 of the Business and Professions Code is repealed.

SEC. 26. Section 7606 of the Business and Professions Code is amended to read:

7606. The program may, pursuant to the provisions of the Administrative Procedure Act, adopt and enforce reasonably necessary rules and regulations relating to:

(a) The practice of embalming;

(b) The business of a funeral director;

(c) The sanitary conditions of places where such practice or business is conducted with particular regard to plumbing, sewage, ventilation and equipment;

(d) Specifying conditions for approval of funeral establishments for apprentices and for approval of embalming schools;

(e) The scope of examinations;

(f) Carrying out generally the various provisions of this chapter for the protection of the peace, health, safety, welfare and morals of the public.

SEC. 27. Section 7607 of the Business and Professions Code is amended to read:

7607. The program may inspect the premises in which the business of a funeral director is conducted or where embalming is practiced.

SEC. 28. Section 7607.5 of the Business and Professions Code is repealed.

SEC. 29. Section 7608 of the Business and Professions Code is amended to read:

7608. The Director of Consumer Affairs may employ and appoint all employees necessary to properly administer the work of the program, in accordance with civil service regulations.

With the approval of the Director of Finance, and, subject to the provisions of Section 159.5, the program shall employ investigators and attorneys to assist the program in prosecuting violations of this chapter, whose compensation and expenses shall be payable only out of the State Funeral Directors and Embalmers Fund.

SEC. 30. Section 7610 of the Business and Professions Code is amended to read:

7610. All suits or actions commenced in the superior court against the program shall be filed and tried either in the County of Sacramento, or in the county of the residence of the plaintiff or petitioner, or in the county where the act occurred, which is the basis of the suit or action.

SEC. 31. The heading of Article 2 (commencing with Section 7615) of Chapter 12 of Division 3 of the Business and Professions Code is amended to read:

Article 2. Funeral Establishments and Directors

SEC. 32. Section 7616.2 of the Business and Professions Code is amended to read:

7616.2. A licensed funeral establishment shall at all times employ a licensed funeral director to manage, direct, or control its business

or profession. Notwithstanding any other provisions of this chapter, licensed funeral establishments within close geographical proximity of each other, may request the program to allow a licensed funeral director to manage, direct, or control the business or profession of more than one facility.

SEC. 33. Section 7618 of the Business and Professions Code is amended to read:

7618. An application for a funeral director's license shall be written on a form provided by the program, verified by the applicant, accompanied by the fee fixed by this chapter and filed at its Sacramento office.

SEC. 34. Section 7619.2 of the Business and Professions Code is amended to read:

7619.2. The program shall grant a funeral director's license to any applicant who complies with this article, notwithstanding Section 7619, if the applicant can demonstrate that he or she has complied with Section 7622 on or before July 1, 1999.

SEC. 35. Section 7621 of the Business and Professions Code is amended to read:

7621. The applicant shall also furnish the program with satisfactory proof that the facility in which he or she intends to conduct business as a funeral director is or will be constructed, equipped and maintained in all respects as a licensed funeral establishment as defined in this chapter.

SEC. 37. Section 7625 of the Business and Professions Code is amended to read:

7625. Upon receipt of an application for a license, the program shall cause an investigation to be made of the physical status or plans and specifications of the proposed funeral establishment, and of the other qualifications required of the applicant under this chapter, and for this purpose may subpoena witnesses, administer oaths, and take testimony.

The program shall grant a license if it finds that the proposed funeral establishment is or will be constructed and equipped as required by this chapter and that the applicant is qualified in all other respects as required by this chapter.

SEC. 38. Section 7626 of the Business and Professions Code is amended to read:

7626. The program shall examine and pass upon the qualifications of the applicant as to ability and experience before passing upon the physical status or plans and specifications of the proposed funeral establishment.

SEC. 39. Section 7626.5 of the Business and Professions Code is amended to read:

7626.5. Where a hearing is held to determine whether an application for a license should be granted, the proceeding shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of

Title 2 of the Government Code, and the program shall have all of the powers granted therein.

SEC. 40. Section 7628 of the Business and Professions Code is amended to read:

7628. Any person, partnership, association, corporation, or other organization desiring to change the location of a licensed funeral establishment shall apply therefor on forms furnished by the program and shall include a fee fixed by this chapter.

The application shall be granted by the program upon the filing with the program of a favorable report from an inspector concerning the physical status or plans and specifications of the proposed licensed funeral establishment to the effect that it conforms to the requirements of this article.

SEC. 41. Section 7629 of the Business and Professions Code is amended to read:

7629. No funeral establishment shall be conducted or held forth as being conducted or advertised as being conducted under any name which might tend to mislead the public or which would be sufficiently like the name of any other licensed funeral director so as to constitute an unfair method of competition.

Any funeral director desiring to change the name appearing on his or her license may do so by applying to the program and paying the fee fixed by this chapter.

SEC. 42. Section 7631 of the Business and Professions Code is amended to read:

7631. In case of the death of a licensed funeral director, who leaves an established business as part or all of the assets of his or her estate, the program may issue a special temporary license to his or her legal representative, unless the legal representative has committed acts or crimes constituting grounds for denial of licensure under Section 480.

SEC. 43. Section 7632 of the Business and Professions Code is amended to read:

7632. Every funeral director shall cause all human remains embalmed in his or her funeral establishment to be embalmed by a regularly licensed embalmer, or by an apprentice embalmer under the supervision of a regularly licensed embalmer.

SEC. 44. Section 7634 of the Business and Professions Code is amended to read:

7634. Notwithstanding any other provision of law, a licensed embalmer, at the request of a licensed physician, may remove tissue from human remains for transplant, or therapeutic, or scientific purposes specified in, and pursuant to, the provisions of the Uniform Anatomical Gift Act (Chapter 3.5 (commencing with Section 7150) of Part 1 of Division 7 of the Health and Safety Code), if such embalmer has completed a course in tissue removal for transplant, or therapeutic, or scientific purposes approved by the Medical Board of California of the State of California.

SEC. 45. Section 7635 of the Business and Professions Code is amended to read:

7635. (a) Any person employed by, or an agent of, a licensed funeral establishment, who consults with the family or representatives of a family of a deceased person for the purpose of arranging for services as set forth in subdivision (a) of Section 7615, shall receive documented training and instruction which results in a demonstrated knowledge of all applicable federal and state laws, rules, and regulations including those provisions dealing with vital statistics, the coroner, anatomical gifts, and other laws, rules, and regulations pertaining to the duties of a funeral director. A written outline of the training program, including documented evidence of the training time, place, and participants, shall be maintained in the funeral establishment and shall be available for inspection and comment by an inspector of the department.

(b) This section shall not apply to anyone who has successfully passed the funeral director's examination pursuant to Section 7622.

SEC. 46. Section 7640 of the Business and Professions Code is amended to read:

7640. An embalmer is one who is duly qualified to disinfect or preserve human remains by the injection or external application of antiseptics, disinfectants or preservative fluids; to prepare human bodies for transportation which are dead of contagious or infectious diseases; and to use derma surgery or plastic art for restoring mutilated features; and who is duly licensed as an embalmer under the laws of the State of California.

SEC. 47. Section 7641 of the Business and Professions Code is amended to read:

7641. It is unlawful for any person to embalm a body, or engage in, or hold himself or herself out as engaged in practice as an embalmer, unless he or she is licensed by the program. However, this section shall have no effect on students and instructors of embalming in embalming colleges approved by the program.

SEC. 48. Section 7642 of the Business and Professions Code is amended to read:

7642. An application for an embalmer's license shall be written on a form provided by the program, verified by the applicant, and accompanied by the fee fixed by this chapter.

SEC. 49. Section 7643 of the Business and Professions Code is amended to read:

7643. In order to qualify for a license as an embalmer, the applicant shall comply with all of the following requirements:

(a) Be over 18 years of age.

(b) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(c) Furnish proof showing completion of a high school course or instead he or she may furnish the program with evidence that he or she has been licensed and has practiced as an embalmer for a

minimum of three years within the seven years preceding his or her application in any other state or country and that the license has never been suspended or revoked for unethical conduct.

(d) Have completed at least two years of apprenticeship under an embalmer licensed and engaged in practice as an embalmer in this state in a funeral establishment which shall have been approved for apprentices by the program and while so apprenticed shall have assisted in embalming not fewer than 100 human remains; provided, however, that a person who has been licensed and has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and whose license has never been suspended or revoked for unethical conduct shall not be required to serve any apprenticeship in this state.

(e) Have successfully completed a course of instruction of not less than one academic year in an embalming school approved by the program and accredited by the American Board of Funeral Service Education.

SEC. 50. Section 7646 of the Business and Professions Code is amended to read:

7646. The program shall require the applicant to pass an examination, which shall include the following subjects:

(a) Theory and practice of embalming.

(b) Anatomy, including histology, embryology and dissection.

(c) Pathology and bacteriology.

(d) Hygiene, including sanitation and public health.

(e) Chemistry, including toxicology.

(f) Restorative art, including plastic surgery and demisurgery.

(g) Laws, rules and regulations of the program, including those sections of the Health and Safety Code which pertain to the funeral industry.

SEC. 51. Section 7647 of the Business and Professions Code is amended to read:

7647. The program shall examine applicants for embalmer's licenses at least once annually.

Examinations shall be held at such times and places as may be determined by the program.

Notice of the time and place of such examinations shall be given as determined by the program.

SEC. 52. Section 7647.5 of the Business and Professions Code is amended to read:

7647.5. Where a hearing is held to determine whether an application for a license should be granted, the proceeding shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the program shall have all of the powers granted therein.

SEC. 53. Section 7650 of the Business and Professions Code is amended to read:

7650. From time to time, the program may examine the requirements for the issuance of licenses to embalmers in other states of the United States and cause a record to be kept of those states in which standards are maintained for embalmers, not lower than those provided in this chapter.

SEC. 55. Section 7661 of the Business and Professions Code is amended to read:

7661. An application for registration as an embalmer's apprentice shall be made upon a form provided by the program, verified by the applicant and accompanied by the fee fixed by this chapter.

SEC. 56. Section 7662 of the Business and Professions Code is amended to read:

7662. In order to qualify as an apprentice embalmer, an applicant shall comply with all of the following requirements:

(a) Be over 18 years of age.

(b) Not have committed acts or crimes constituting grounds for denial of licensure under Section 480.

(c) Furnish proof showing completion of a high school course or instead he or she may furnish the program with evidence that he or she has been licensed and has practiced as an embalmer for a minimum of three years within the seven years preceding his or her application in any other state or country and that the license has never been suspended or revoked for unethical conduct.

SEC. 57. Section 7663 of the Business and Professions Code is repealed.

SEC. 58. Section 7664 of the Business and Professions Code is amended to read:

7664. Certificates of apprenticeship issued pursuant to this article shall expire when the holder has been issued a license as an embalmer, or six years from the date of registration, whichever first occurs. The certificates may not be renewed, but an apprentice embalmer who has not completed his or her term of apprenticeship at the time his or her certificate expires may apply for reregistration upon compliance with Section 7661. The program may, when the circumstances warrant, allow an apprentice credit under a reregistration for the time actually served under a previous registration, but no reregistration shall have the effect of continuing the term of apprenticeship beyond the period specified in Sections 7666 and 7666.5.

SEC. 59. Section 7665 of the Business and Professions Code is amended to read:

7665. All registered apprentice embalmers shall comply with the following requirements during their period of apprenticeship:

(a) Shall file a report of apprenticeship as follows:

(1) On or before January 15 of each year covering the period of apprenticeship ending as of December 31 preceding.

(2) Upon change of supervising embalmer or employer, or both.

(3) Upon completion of apprenticeship.

(4) Upon application for leave of absence for a period in excess of 15 days.

(5) Upon suspending apprenticeship to attend embalming college.

(6) Upon application for reregistration after suspension or revocation of registration where complete report of previous registration has not been filed.

(b) The information contained in the report shall consist of a concise summary of the work done by the apprentice during the period covered thereby, shall be verified by the apprentice and certified to as correct by his or her supervising embalmer and employer. Upon request of the program, each funeral director in whose establishment an apprenticeship is being, or has been, served, and each embalmer under whose instruction or supervision an apprenticeship is being or has been served, shall promptly file with the program a report or such other information as may be requested relating to the apprenticeship. Failure to comply with the request is cause for revocation by the program of the approval granted to the funeral director or embalmer for the training of apprentices and is also a cause for disciplinary action against the funeral director or embalmer.

SEC. 60. Section 7666 of the Business and Professions Code is amended to read:

7666. (a) The term of apprenticeship shall be two years. However if an apprentice after having served his or her apprenticeship fails to pass the examination for an embalmer's license he or she may continue for one additional term of apprenticeship, which shall be the maximum apprenticeship permitted and provided further that an apprentice may, upon filing an application therefor, be permitted to continue the apprenticeship for a period not to exceed six months, if approved, for any of the following reasons:

(1) While awaiting the processing of applications submitted to the program.

(2) While awaiting notification of grades of embalmers' examinations administered by the program.

(3) While awaiting the commencement of a class of an embalming school or college when the apprentice intends to enroll in the school or college.

Applications filed for an extension of apprenticeship shall be filed by the applicant with the program not fewer than 15 days prior to the date the applicant requests the extension to commence.

(b) Terms of apprenticeship may be served before, after, or divided by the embalming college course at the option of the apprentice; provided, however, that the term of apprenticeship must be completed, excluding time spent in active military service, within six years from the date of original registration, or from the date an apprentice successfully passes the examination for embalmer's

license required in Section 7646 of this code, whichever first occurs, and provided further that if the term of apprenticeship is not completed within the six-year period, the program may require that the applicant serve the additional term of apprenticeship, not to exceed two years.

(c) A student attending an embalming college may register as an apprentice during his or her college term but shall receive no credit for apprenticeship on the term required by this code unless he or she is also a full-time employee of a funeral director.

(d) An apprentice while serving his or her required term of apprenticeship shall be a full-time employee in the funeral establishment in which he or she is employed.

SEC. 61. Section 7667 of the Business and Professions Code is amended to read:

7667. (a) The program shall have the power to grant leaves of absence and extensions of leaves of absence and approve absences during the term of apprenticeship.

(b) A leave of absence, including any extensions, shall not be approved for a longer period than an aggregate of one year.

(c) No credit will be given to an apprentice on his or her apprenticeship for the period during which he or she is absent from duty on leave.

(d) Application for a leave of absence and for an extension thereof shall be made by the apprentice on a form provided by the program.

(e) Upon termination of a leave of absence, the apprentice shall report that fact to the program within 10 days of his or her resumption of apprenticeship by returning to the program, his or her certificate of registration accompanied by a statement as to the resumption of apprenticeship which statement shall be certified as correct by the funeral director in whose establishment he or she is to resume his or her duties and by the embalmer under whose supervision he or she is to resume his or her apprenticeship.

(f) Failure to report within 10 days after the expiration date of any leave of absence shall be cause for cancellation of the registration of an apprentice.

SEC. 62. Section 7668 of the Business and Professions Code is amended to read:

7668. The program may suspend or revoke a certificate of apprenticeship, after notice and upon complaint and hearing in accordance with the provisions of Article 6, if the apprentice is guilty of any of the following acts or omissions:

(a) Failure to devote full-time employment to the duties of his or her apprenticeship.

(b) Failure to make any report required by this chapter.

(c) Absence from duty except as provided in this code.

(d) Being on duty as an apprentice while under the influence of any controlled substance, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous

drug as defined in Article 2 (commencing with Section 4015) of Chapter 9 of the Business and Professions Code, or alcoholic beverages or other intoxicating substances, to an extent dangerous or injurious to himself, herself, any person, or the public to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her certification.

(e) Disobedience of proper orders or instructions of his or her superior.

(f) Violation of any provision of this chapter or any rule or regulation of the program.

(g) Soliciting business for a funeral director or for an embalmer in violation of this chapter.

(h) Fraud or misrepresentation in obtaining a certificate of registration as an apprentice.

(i) Conviction of a crime substantially related to the qualifications, functions and duties of an apprentice, in which case the record of conviction, or a certified copy, shall be conclusive evidence of the conviction.

SEC. 63. Section 7669 of the Business and Professions Code is amended to read:

7669. An apprentice who has had his or her certificate of apprenticeship suspended or revoked may, within one year after the suspension or revocation apply for reregistration upon compliance with the law in effect at the time he or she so applies and payment of the apprentice application fee fixed by this chapter. No reregistration shall have the effect of continuing an apprenticeship beyond the period specified in Section 7666.

The program may, when the circumstances warrant, allow an apprentice credit under a reregistration for the time actually served under a previous registration, but if the previous registration has been suspended or revoked for unprofessional conduct, not more than 75 percent of the time previously served shall be credited on the reregistration.

SEC. 64. Section 7670 of the Business and Professions Code is amended to read:

7670. (a) The apprenticeship required by this article shall be served in a licensed funeral establishment that shall have been previously approved for apprenticeship training by the program. In order to qualify for approval the funeral director shall submit to the program an application, accompanied by the fee fixed by this chapter, showing:

(1) That not less than 50 human remains per apprentice employed have been embalmed in the establishment during the 12 months immediately preceding the date of the application.

(2) That the applicant has, and will continue to have, in full-time employment, for each two apprentices employed in his or her establishment, a California embalmer who has had not less than two

years' practical experience as a California licensed embalmer immediately preceding the date of the application.

(3) That the licensed funeral establishment of that applicant meets the requirements of law as to equipment, cleanliness and sanitation as determined by an inspection report filed with the program.

(b) Licensed funeral establishments under common ownership within close geographical proximity of each other may request any of the following from the program:

(1) To be treated in aggregate for the purpose of meeting the requirements of paragraph (1) of subdivision (a).

(2) To designate one additional supervising embalmer per registered apprentice.

(3) To allow a registered apprentice to serve in any or all of the licensed funeral establishments requested and approved pursuant to this section.

(c) Approval granted under this section shall be renewed annually upon application by the funeral director, showing continued compliance with the foregoing provisions of this section, filed with the program not later than January 15 of each year. An application for renewal shall be accompanied by the fee fixed by this chapter.

SEC. 65. Section 7685.2 of the Business and Professions Code is amended to read:

7685.2. No funeral director shall enter into a contract for furnishing services or property in connection with the burial or other disposal of human remains until he or she has first submitted to the potential purchaser of such services or property a written or printed memorandum containing the following, provided such information is available at the time of execution of the contract:

(a) The total charge for the funeral director's services and the use of his or her facilities, including the preparation of the body and other professional services, and the charge for the use of automotive and other necessary equipment.

(b) An itemization of charges for the following merchandise as selected: the casket, an outside receptacle and clothing.

(c) An itemization of fees or charges and the total amount of cash advances made by the funeral director for transportation, flowers, cemetery or crematory charges, newspaper notices, clergy honorarium, transcripts, telegrams, long distance telephone calls, music and such other advances as authorized by the purchaser.

(d) An itemization of any other fees or charges not included above.

(e) The total of the amount specified in subdivisions (a), (b), (c), and (d).

If the charge for any of the above items is not known at the time the contract is entered into, the funeral director shall advise the purchaser of the charge therefor, within a reasonable period after the

information becomes available. All prices charged for items covered under Sections 7685 and 7685.1 shall be the same as those given under such sections.

SEC. 65.5. Section 7685.2 of the Business and Professions Code is amended to read:

7685.2. (a) No funeral director shall enter into a contract for furnishing services or property in connection with the burial or other disposal of human remains until he or she has first submitted to the potential purchaser of those services or property a written or printed memorandum containing the following information, provided that information is available at the time of execution of the contract:

(1) The total charge for the funeral director's services and the use of his or her facilities, including the preparation of the body and other professional services, and the charge for the use of automotive and other necessary equipment.

(2) An itemization of charges for the following merchandise as selected: the casket, an outside receptacle, and clothing.

(3) An itemization of fees or charges and the total amount of cash advances made by the funeral director for transportation, flowers, cemetery or crematory charges, newspaper notices, clergy honorarium, transcripts, telegrams, long distance telephone calls, music, and any other advances as authorized by the purchaser.

(4) An itemization of any other fees or charges not included above.

(5) The total of the amount specified in paragraphs (1) to (4), inclusive.

If the charge for any of the above items is not known at the time the contract is entered into, the funeral director shall advise the purchaser of the charge therefor, within a reasonable period after the information becomes available. All prices charged for items covered under Sections 7685 and 7685.1 shall be the same as those given under such sections.

(b) A funeral director shall obtain from the person with the right to control the disposition pursuant to Section 7100 of the Health and Safety Code, or the person prearranging the cremation and disposition of his or her own remains, a signed declaration designating specific instructions with respect to the disposition of cremated remains. The department shall make available a form upon which the declaration shall be made. The form shall include, but not be limited to, the names of the persons with the right to control the disposition of the cremated remains and the person who is contracting for the cremation services; the name of the deceased; the name of the funeral director in possession of the remains; the name of the crematorium; and specific instructions regarding the manner, location, and other pertinent details regarding the disposition of cremated remains. The form shall be signed and dated by the person arranging for the cremation and the funeral director in charge of providing service.

(c) A funeral director entering into a contract to furnish cremation services shall provide to the purchaser of cremation services, either on the first page of the contract for cremation services, or on a separate page attached to the contract, a written or printed notice containing the following information:

(1) FOR MORE INFORMATION ON CEMETERY AND CREMATION MATTERS, CONTACT: Department of Consumer Affairs (800) 952-5210.

(2) A person having the right to control disposition of cremated remains may remove the remains in a durable container from the place of cremation or interment, pursuant to Section 7054.6 of the Health and Safety Code.

(3) If the cremated remains container cannot accommodate all cremated remains of the deceased, the crematory shall provide a larger cremated remains container at no additional cost, or place the excess in a second container that cannot easily come apart from the first, pursuant to Section 8345 of the Health and Safety Code.

SEC. 66. Section 7685.3 of the Business and Professions Code is amended to read:

7685.3. Commencing January 1, 1994, the current address, telephone number, and name of the Department of Consumer Affairs, Cemetery and Funeral Programs shall appear on the first page of any contract for goods and services offered by a funeral director. At a minimum, the information shall be in 8-point boldface type and make this statement:

"FOR MORE INFORMATION ON FUNERAL MATTERS, CONTACT: DEPARTMENT OF CONSUMER AFFAIRS, (ADDRESS), (TELEPHONE NUMBER)."

SEC. 67. Section 7686 of the Business and Professions Code is amended to read:

7686. The program may suspend or revoke licenses, after proper notice and hearing to the licensee, if the licensee has been found guilty by the program of any of the acts or omissions constituting grounds for disciplinary action. The proceedings under this article shall be conducted in accordance with Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code, and the program shall have all the powers granted therein.

SEC. 68. Section 7686.5 of the Business and Professions Code is amended to read:

7686.5. All accusations against licensees shall be filed with the department within two years after the performance of the act or omission alleged as the ground for disciplinary action; provided, however, that the foregoing provision shall not constitute a defense to an accusation alleging fraud or misrepresentation as a ground for disciplinary action. The cause for disciplinary action in such case shall not be deemed to have accrued until discovery, by the program, of

the facts constituting the fraud or misrepresentation, and, in such case, the accusation shall be filed within three years after such discovery.

SEC. 69. Section 7687 of the Business and Professions Code is amended to read:

7687. Upon receipt of a complaint, the program may make or cause to be made such investigation as it deems necessary.

SEC. 70. Section 7687.5 of the Business and Professions Code is repealed.

SEC. 71. Section 7690 of the Business and Professions Code is amended to read:

7690. The program may discipline every accused licensee whose default has been entered or who has been tried and found guilty, after formal hearing, of any act or omission constituting a ground for disciplinary action.

Any of the following penalties may be imposed by the program:

(a) Suspension of the disciplinary order.

(b) Reproval, public or private.

(c) Probation.

(d) Suspension of the right to practice.

(e) Revocation of the right to practice.

(f) Such other penalties as the program deems fit.

SEC. 72. Section 7693 of the Business and Professions Code is amended to read:

7693. False or misleading advertising as a funeral establishment, funeral director, or embalmer constitutes a ground for disciplinary action.

SEC. 73. Section 7696 of the Business and Professions Code is amended to read:

7696. Employment, directly or indirectly, of any apprentice, agent, assistant, embalmer, employee or other person, on part or full time, or on commission, for the purpose of calling upon individuals or institutions by whose influence human remains may be turned over to a particular funeral director or embalmer constitutes a ground for disciplinary action.

SEC. 74. Section 7697 of the Business and Professions Code is amended to read:

7697. The buying, after a death or while a death is impending, of funeral directing and embalming business by the licensee, the licensee's agents, assistants or employees, or the direct or indirect payment, or offer of payment, of a commission by the licensee, the licensee's agents, assistants or employees for the purpose of such buying of business, constitutes a ground for disciplinary action.

SEC. 75. Section 7700 of the Business and Professions Code is amended to read:

7700. Using profane, indecent, or obscene language in the course of the preparation for burial, removal, or other disposition of, or during the funeral service for, human remains, or within the

immediate hearing of the family or relatives of a deceased, whose remains have not yet been interred or otherwise disposed of constitutes a ground for disciplinary action.

SEC. 76. Section 7701 of the Business and Professions Code is amended to read:

7701. Solicitation or acceptance by a licensee of any commission or bonus or rebate in consideration of recommending or causing human remains to be disposed of in any crematory, mausoleum or cemetery constitutes a ground for disciplinary action.

SEC. 77. Section 7702 of the Business and Professions Code is amended to read:

7702. Using any casket or part of a casket which has previously been used as a receptacle for, or in connection with the burial or other disposition of, human remains constitutes a ground for disciplinary action; provided, however, this section shall not apply to exterior casket hardware which is not sold to the purchaser, or where same is reserved by contract.

SEC. 78. Section 7704 of the Business and Professions Code is amended to read:

7704. Violation of any state law or municipal or county ordinance or regulation affecting the handling, custody, care or transportation of human remains constitutes a ground for disciplinary action.

SEC. 79. Section 7706 of the Business and Professions Code is amended to read:

7706. Refusing to surrender promptly the custody of human remains, upon the express order of the person lawfully entitled to its custody constitutes a ground for disciplinary action.

SEC. 80. Section 7708 of the Business and Professions Code is amended to read:

7708. The program, after a hearing, may deny the application of a funeral establishment, funeral director, embalmer, or apprentice embalmer on proof that the applicant has committed acts or crimes constituting grounds for denial of licensure under Section 480. The record of conviction, or a certified copy thereof, shall be conclusive evidence of the conviction.

SEC. 81. Section 7709 of the Business and Professions Code is amended to read:

7709. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The program may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person to withdraw his plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

SEC. 82. Section 7711 of the Business and Professions Code is amended to read:

7711. When a funeral establishment, funeral director or embalmer has had his, or her, or its license suspended, canceled, or revoked by the program, the program, upon written application by the licensee affected, upon not less than 10 days' notice to all parties of record in the particular case, and after hearing all evidence offered in support of and in opposition to that application, may, in its discretion, and upon those terms as it may deem just, reinstate the applicant.

SEC. 83. Section 7715 of the Business and Professions Code is amended to read:

7715. Any person, partnership, association, corporation, or other form of organization, or any agent or representative thereof, who violates any of the provisions of this chapter is guilty of a misdemeanor.

SEC. 84. Section 7718.5 of the Business and Professions Code is amended to read:

7718.5. Every person as an individual, as a partner in a partnership or as an officer or employee of a corporation, association or other organization, who, without a license, holds himself or herself out as a funeral director, is guilty of a misdemeanor.

SEC. 85. Section 7725 of the Business and Professions Code is amended to read:

7725. Licenses issued under this chapter shall expire at 12 p.m. on January 31, 1969, and thereafter at 12 p.m. on January 31 of each year, if not in each instance renewed. To renew an unexpired license, the holder thereof shall on or before the date on which it would otherwise expire, apply for renewal on a form prescribed by the program, and pay the renewal fee prescribed by this chapter.

On or before the 10th day of December of each year, commencing in 1968, the program shall mail to each licensed funeral establishment, funeral director, and embalmer, addressed to him or her at his or her last known address, a notice that a renewal fee is due and payable.

SEC. 86. Section 7725.2 of the Business and Professions Code is amended to read:

7725.2. Except as otherwise provided in this article, a license which has expired may be renewed at any time within five years after its expiration on filing of an application for renewal on a form prescribed by the program and payment of the renewal fee in effect on the last regular renewal date. If the license is not renewed within 30 days after its expiration the licensee, as a condition precedent to renewal, shall also pay the delinquency fee prescribed by this chapter. Renewal under this section shall be effective on the date on which the application is filed, on the date on which the renewal fee is paid, or on the date on which the delinquency fee, if any, is paid, whichever last occurs. If so renewed, the license shall continue in

effect through the date provided in Section 7725 which next occurs after the effective date of the renewal, when it shall expire if it is not again renewed.

If a license is not renewed within one year following its expiration, the program may require as a condition of renewal that the holder of the license pass an examination on the appropriate subjects provided by this chapter.

SEC. 87. Section 7725.5 of the Business and Professions Code is amended to read:

7725.5. A license which is not renewed within five years after its expiration may not be renewed, restored, reissued, or reinstated thereafter. The holder of the expired license may obtain a new license only if the holder pays all of the fees, and meets all of the requirements, other than requirements relating to education, set forth in this chapter for obtaining an original license, except that the program may issue a new license to the holder without an examination if the holder establishes to the program's satisfaction that, with due regard for the public interest, the holder is qualified to engage in the activity in which the holder again seeks to be licensed. The program may, by appropriate regulation, provide for the waiver or refund of all or any part of the application fee in those cases in which a license is issued without an examination under this section.

The provisions of this section do not apply to certificates of apprenticeship.

SEC. 88. Section 7727 of the Business and Professions Code is amended to read:

7727. On or before the tenth day of each month, the department shall pay into the State Treasury and report to the State Controller all the fees received for the program. The fees shall be received by the State Treasurer and placed in the State Funeral Directors and Embalmers Fund, which fund is available for expenditures necessary for the proper administration of this chapter.

SEC. 89. Section 7735 of the Business and Professions Code is amended to read:

7735. No funeral establishment licensed under the laws of the State of California, or the agents or employees of a funeral establishment, shall enter into or solicit any preneed arrangement, contract or plan, hereinafter referred to as "contract," requiring the payment to the licensee of money or the delivery to the licensee of securities to pay for the final disposition of human remains or for funeral services or for the furnishing of personal property or funeral merchandise, wherein the use or delivery of those services, property or merchandise is not immediately required, unless the contract requires that all money paid directly or indirectly and all securities delivered under that agreement or under any agreement collateral thereto, shall be held in trust for the purpose for which it was paid or delivered until the contract is fulfilled according to its terms;

provided, however, that any payment made or securities deposited pursuant to this article shall be released upon the death of the person for whose benefit the trust was established as provided in Section 7737. The income from the corpus may be used to pay for a reasonable annual fee for administering the trust, including a trustee fee, to be determined by the program, and to establish a reserve of not to exceed 10 percent of the corpus as a revocation fee in the event of cancellation on the part of the beneficiary.

None of the trust corpus shall be used for payment of any commission nor shall any of the trust corpus be used for other expenses of trust administration.

SEC. 90. Section 7737.3 of the Business and Professions Code is amended to read:

7737.3. All commingled preneed trust funds held by a funeral establishment shall be subject to an annual, independent certified financial audit with a copy of the audit to be submitted to the program for review within 120 days of the close of the fund's fiscal year. Any findings of noncompliance with existing law regarding preneed trust funds shall be identified by the auditor in a separate report for review and action by the program. Audits and reports of noncompliance shall be filed simultaneously.

SEC. 91. Section 7737.5 of the Business and Professions Code is amended to read:

7737.5. A trustee may deposit the corpus of the trust in any financial institution insured by the Federal Deposit Insurance Corporation.

SEC. 92. Section 7740 of the Business and Professions Code is amended to read:

7740. The program is authorized to enforce of its own initiative the provisions of this article and may adopt such rules and regulations as in its opinion may be necessary to perform such duties and to safeguard the trust funds subject to this chapter.

SEC. 93. Section 7740.5 of the Business and Professions Code is amended to read:

7740.5. A funeral establishment shall pay to the program the fee fixed by this chapter for filing with the program any report on preneed trust funds required by rules and regulations of the program adopted pursuant to Section 7740.

SEC. 94. Section 8556 of the Business and Professions Code is amended to read:

8556. (a) Licensed contractors acting in their capacity as such, may remove and replace any structure or portions of a structure damaged by wood-destroying pests or organisms if such work is incidental to other work being performed on the structure involved or if such work has been identified by a structural pest control inspection report. Licensed contractors acting in their capacity as such may apply wood preservatives directly to end cuts and drill holes of pressure treated wood, and to foundation wood as required

by building codes, as well as to fencing and decking, by brush, dip, or spray method and need not obtain a structural pest control operator's license under this chapter for performance of that work, provided a disclosure in the following form is submitted to the customer in writing: "The application of a wood preservative is intended to prevent the establishment and flourishing of organisms which can deteriorate wood. If you suspect pest infestation or infection, contact a registered structural pest control company prior to the application of a wood preservative."

These exemptions do not authorize the performance of any other acts defined in Section 8505.

(b) A licensed contractor may contract for the performance of any soil treatment pest control work to eliminate, exterminate, control, or prevent infestations or infections of pests or organisms in the ground beneath or adjacent to any existing building or structure or in or upon any site upon which any building or structure is to be constructed, but the actual performance of any such work must be done by a registered structural pest control company.

SEC. 95. Section 9603 of the Business and Professions Code is repealed.

SEC. 96. Section 9603 is added to the Business and Professions Code, to read:

9603. The following terms as used in this chapter shall have the meanings expressed in this section:

(a) "Department" means the Department of Consumer Affairs.

(b) "Director" means the Director of Consumer Affairs.

(c) "Program" means the Cemetery Program.

SEC. 97. Section 9604 of the Business and Professions Code is amended to read:

9604. A cemetery broker is a person who, other than in reference to an occasional sale, sells or offers for sale, buys, or offers to buy, lists, leases or offers to lease, or solicits, or negotiates the purchase or sale, lease or exchange of cemetery property or interment services, or interest therein, for his or her own account or for another.

SEC. 98. Section 9605 of the Business and Professions Code is amended to read:

9605. A cemetery salesperson is a natural person who, other than in reference to an occasional sale, is employed by a cemetery broker to sell, or offer for sale, list or offer to list, or to buy, or to offer to buy, or to lease, or offer to lease, or to solicit, or to negotiate the purchase or sale or lease or exchange of cemetery property or interment services, or any interest therein, for his or her own account or for another.

SEC. 99. Section 9625 is added to the Business and Professions Code, to read:

9625. There is in the department, the Cemetery Program, under the supervision and control of the director.

The director may appoint a chief at a salary to be fixed and determined by the director, with the approval of the Director of Finance. The duty of enforcing and administering this chapter is vested in the chief, and he or she is responsible to the director therefor. The chief shall serve at the pleasure of the director.

SEC. 100. Section 9626 of the Business and Professions Code is repealed.

SEC. 101. Section 9626.5 of the Business and Professions Code is repealed.

SEC. 102. Section 9627 of the Business and Professions Code is repealed.

SEC. 103. Section 9628 of the Business and Professions Code is repealed.

SEC. 104. Section 9629 of the Business and Professions Code is repealed.

SEC. 105. Section 9630 of the Business and Professions Code is amended to read:

9630. The program may establish necessary rules and regulations for the administration and enforcement of this act and the laws subject to its jurisdiction and prescribe the form of statements and reports provided for in this act. The rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act.

SEC. 106. Section 9630.5 of the Business and Professions Code is repealed.

SEC. 107. Section 9631 of the Business and Professions Code is amended to read:

9631. In the enforcement of this act and the laws subject to its jurisdiction, the program has all the powers and is subject to all the responsibilities vested in and imposed upon the head of a department under Chapter 2 (commencing with Section 11150) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 108. Section 9650 of the Business and Professions Code is amended to read:

9650. (a) Each cemetery authority shall file with the program annually, on or before June 1, or within five months after close of their fiscal year provided approval has been granted by the program as provided for in Section 9650.1, a written report in form prescribed by the program setting forth the following:

(1) The number of square feet of grave space and the number of crypts and niches sold or disposed of under endowment care by specific periods as set forth in the form prescribed.

(2) The amount collected and deposited in both the general and special endowment care funds segregated as to the amounts for crypts, niches and grave space by specific periods as set forth either on the accrual or cash basis at the option of the cemetery authority.

(3) A statement showing separately the total amount of the general and special endowment care funds invested in each of the

investments authorized by law and the amount of cash on hand not invested, which statement shall actually show the financial condition of the funds.

(4) A statement showing separately the location, description, and character of the investments in which the special endowment care funds are invested. The statement shall show the valuations of any securities held in the endowment care fund as valued pursuant to Section 9659.

(5) A statement showing the transactions entered into between the corporation or any officer, employee or stockholder thereof and the trustees of the endowment care funds with respect to those endowment care funds. The statement shall show the dates, amounts of the transactions, and shall contain a statement of the reasons for those transactions.

(b) The report shall be verified by the president or vice president and one other officer of the cemetery corporation. The information submitted pursuant to paragraphs (2), (3), (4), and (5) shall be accompanied by an annual audit report of the endowment care fund and special care fund signed by a certified public accountant or public accountant. The scope of the audit shall include the inspection, review, and audit of the general purpose financial statements of the endowment care fund and special care fund, which shall include the balance sheet, the statement of revenues, expenditures, and changes in fund balance.

(c) If a cemetery authority files a written request prior to the date the report is due, the program may, in its discretion, grant an additional 30 days within which to file the report.

SEC. 109. Section 9650.1 of the Business and Professions Code is amended to read:

9650.1. Each cemetery authority requesting a change of filing date of the endowment care fund report from a calendar year to a fiscal year or a change in fiscal year shall file a petition with the program prior to the close of the year of request. The program may approve such petition provided that no report shall be for a period of more than 12 months.

SEC. 110. Section 9650.2 of the Business and Professions Code is amended to read:

9650.2. The report shall state the name of the trustee or trustees of the endowment care fund. Any change of trustee shall be reported to the program within a period of 30 days after the change is made.

SEC. 110.5. Section 9650.3 of the Business and Professions Code is amended to read:

9650.3. A copy of each annual audit report shall be transmitted to the program and shall be a public record. It shall also be open for public inspection at the offices of the cemetery authority during normal business hours. If the cemetery authority does not maintain offices in the county in which its cemetery is located, it shall file a

copy of the annual audit report with the county clerk of the county, which shall be subject to public inspection.

SEC. 111. Section 9650.4 of the Business and Professions Code is amended to read:

9650.4. (a) Any cemetery authority that does not file its report within the time prescribed by Section 9650 may be assessed a fine by the program in an amount not to exceed four hundred dollars ($400) per month for a maximum of five months. The amount of the fine shall be established by regulation 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). Failure to pay the fine within 15 days after receipt of written notification of the assessment or, where a timely request for waiver or reduction of the fine has been filed, within 15 days after receipt of written notification of the program's decision in the matter, shall be cause for disciplinary action.

(b) A cemetery authority may request waiver or reduction of a fine by making a written request therefor. The request shall be postmarked within the time specified above for payment of the fine and shall be accompanied by a statement showing good cause for the request.

(c) The program may waive or reduce the fine where a timely request is made and where it determines, in its discretion, that the cemetery authority has made a sufficient showing of good cause for the waiver or reduction.

SEC. 112. Section 9651 of the Business and Professions Code is amended to read:

9651. The program shall examine the reports filed with it as to their compliance with the requirements of the Health and Safety Code as to the amount of endowment care funds collected and as to the manner of investment of such funds.

SEC. 113. Section 9652 of the Business and Professions Code is amended to read:

9652. The program shall examine the endowment care funds of a cemetery authority:

(a) Whenever it deems necessary and at least once every five years;

(b) Whenever the cemetery authority in charge of endowment care funds fails to file the report required by this article; or

(c) Whenever the accountant or auditor qualifies his or her certification of the report that is prepared and signed by a certified public accountant licensed in the state and prepared in accordance with Section 9650.

(d) The reasonable and necessary cost of the examination performed under subdivision (b) or (c) shall be paid by the cemetery authority.

A certified copy of the actual costs, or a good faith estimate of the costs where actual costs are not available, signed by the director or

his or her designee, shall be prima facie evidence of the reasonable and necessary costs of the examination.

The actual and necessary expense of the examination under subdivision (a) shall, in the discretion of the program, be paid by the cemetery authority whenever the examination requires more than one day and the need for continuing the examination is directly related to identified omissions and errors in the management of endowment care funds.

SEC. 114. Section 9652.1 of the Business and Professions Code is amended to read:

9652.1. If any cemetery authority refuses to pay such expenses, the program shall refuse it a certificate of authority and shall revoke any existing certificate of authority. All examination expense moneys collected by the program shall be paid into the State Treasury to the credit of the Cemetery Fund.

SEC. 115. Section 9653 of the Business and Professions Code is amended to read:

9653. (a) In making the examination the program:

(1) Shall have free access to the books and records relating to the trust funds, their collection and investment, and the number of graves, crypts and niches under endowment care.

(2) Shall inspect and examine the trust funds to determine their condition and the existence of the investments.

(3) Shall ascertain if the cemetery corporation has complied with all the laws applicable to trust funds.

(b) Upon request by the Department of Consumer Affairs, a cemetery authority shall provide records to substantiate the expenditures of the income of the trust funds. If a cemetery authority fails to reasonably comply with this request, the department may have access to books, records, and accounts of a cemetery authority for purposes of ascertaining compliance with applicable laws.

SEC. 116. Section 9654 of the Business and Professions Code is amended to read:

9654. The program may administer oaths and examine under oath any person relative to the endowment care fund. Such examination shall be conducted in the principal office of the person or body in charge of the endowment care fund and shall be private.

SEC. 117. Section 9655 of the Business and Professions Code is amended to read:

9655. If any examination made by the program, or any report filed with it, shows that there has not been collected and deposited in the endowment care funds the minimum amounts required by the Health and Safety Code since September 19, 1939, the program shall require such cemetery corporation to comply with Sections 8743 and 8744 of the Health and Safety Code.

SEC. 118. Section 9656 of the Business and Professions Code is amended to read:

9656. Whenever the program finds, after notice and hearing, that any endowment care funds have been invested in violation of the Health and Safety Code, it shall by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity to that code within a period which shall be not less than two years if the investment was made prior to October 1, 1949, not less than six months if the investment was made on or after October 1, 1949, and before the effective date of the amendment of this section by the 1969 Regular Session of the Legislature, and not less than 30 days if the investment is made on or after the effective date of the amendment. The period may be extended by the program in its discretion.

SEC. 119. Section 9656.1 of the Business and Professions Code is amended to read:

9656.1. The superior court of the county in which the principal office of the cemetery authority in charge of endowment care funds is located shall, upon the filing by the program of a verified application showing any of the following conditions hereinafter enumerated to exist, issue its order vesting title to any endowment care funds of a cemetery authority in the program, and directing the program forthwith to take possession of all necessary books, records, property, real and personal, and assets, and to conduct as conservator, the management of such endowment care funds, or so much thereof as to the program may seem appropriate:

(a) That the cemetery authority has refused to submit its books, papers, accounts, or affairs to the reasonable examination of the program.

(b) That the cemetery authority has neglected to observe an order of the program to make good within the time prescribed by law any deficiency in its investments of endowment care funds.

(c) That the cemetery authority is found, after an examination, to be in such condition that its further management of its endowment care funds will be hazardous to its members, plotholders, or to the public.

(d) That the cemetery authority has violated its articles of incorporation or any law of the state.

(e) That any officer, director, agent, servant or employee of the cemetery authority person refuses to be examined under oath relative to the endowment care funds thereof.

(f) That any person has embezzled or otherwise wrongfully diverted any of the endowment care funds of the cemetery authority.

The order shall continue in force and effect until, on the application either of the program or of the cemetery authority, it shall, after a full hearing, appear to the court that the ground for the order does not exist or has been removed and that the cemetery authority can properly resume title and possession of its property and the management of its endowment care funds.

SEC. 120. Section 9656.2 of the Business and Professions Code is amended to read:

9656.2. When it has been alleged by verified petition pursuant to Section 9652 or when the program on its own investigation determines that there is probable cause to believe that any of the conditions set forth in Section 9656.1 exist or that irreparable loss and injury to the endowment care funds of a cemetery authority has occurred or may occur unless the program so acts immediately, the program, without notice and before applying to the court for any order, may take possession of the endowment care funds and the books, records, and accounts relating thereto of the cemetery authority, and retain possession subject to the order of the court. Any person having possession of and refusing to deliver any assets, books or records of a cemetery authority against which a seizure order has been issued by the program shall be guilty of a misdemeanor and punishable by a fine not exceeding one thousand dollars ($1,000) or imprisonment not exceeding one year, or by both that fine and imprisonment.

SEC. 121. Section 9656.3 of the Business and Professions Code is amended to read:

9656.3. Whenever the program makes any seizure as provided in Section 9656.2, it shall, on demand of the program, be the duty of the sheriff of any county of this state, and of the police department of any municipal corporation therein, to furnish the department with deputies, patrolmen or officers as may be necessary to assist the program in making and enforcing that seizure.

SEC. 122. Section 9656.4 of the Business and Professions Code is amended to read:

9656.4. Immediately after effecting a seizure pursuant to Section 9656.2, the program shall institute a proceeding as provided for in Section 9656.1.

SEC. 122.5. Section 9656.45 is added to the Business and Professions Code, to read:

9656.45. Notwithstanding any other provision of law, the department shall be the custodian of all moneys collected or surrendered pursuant to Sections 9656.1 and 9656.2. As custodian, the department may deposit those moneys, or any part thereof, without court approval, in any of the following: a bank or trust company legally authorized and empowered by the state to act as a trustee in the handling of trust funds; in a centralized State Treasury system bank account; or in funds administered by the State Treasurer.

SEC. 123. Section 9656.5 of the Business and Professions Code is amended to read:

9656.5. The program shall maintain, regulate, operate, and control the property situated in Amador County, referred to as the Elkin Property in Judicial Council Coordination Proceedings Nos. 1814 and 1817, Order Re Proposed Neptune Memorial, Disposition of the Elkin Property, and Order Re Final Disposition of Ashes of the

Sacramento Superior Court, and legally described as "Parcel 16-B as shown on the certain Record or Survey for Eugene S. Lowrance, et ux, filed for record May 17, 1971, in Book 17 of Maps and Plats at page 87, Amador County Records." The program shall administer and supervise endowment funds established by the court for the property. The program shall exercise the authority granted by this section for the sole purpose of protecting the human remains resting on the property and preserving the property in its natural state.

SEC. 124. Section 9657 of the Business and Professions Code is amended to read:

9657. The program is authorized to bring action to enforce the provisions of the law subject to its jurisdiction, in which actions it shall be represented by the Attorney General.

SEC. 125. Section 9658 of the Business and Professions Code is amended to read:

9658. The program shall enforce and administer Part 1 (commencing with Section 8100), Part 3 (commencing with Section 8250), and Part 5 (commencing with Section 9501) of Division 8 of the Health and Safety Code.

SEC. 126. Section 9659 of the Business and Professions Code is amended to read:

9659. In any report to the program all bonds, debentures or other evidences of debt held by a cemetery corporation if amply secured and if not in default as to principal or interest may be valued as follows:

(a) If purchased at par at the par value.

(b) If purchased above or below par on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield the effective rate of interest on the basis at which the purchase was made.

(c) In such valuation the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase.

SEC. 127. Section 9662 of the Business and Professions Code is amended to read:

9662. The current address, telephone number, and name of the program shall appear on the first page of any contract for goods and services offered by a cemetery authority or crematory. At a minimum, the information shall be in 8-point boldface type and make the following statement:

"FOR MORE INFORMATION ON CEMETERY AND CREMATION MATTERS, CONTACT: THE DEPARTMENT OF CONSUMER AFFAIRS, (ADDRESS), (TELEPHONE NUMBER)."

A cemetery authority or crematory operator shall supply the above information in writing when presenting a sales contract to any individual.

SEC. 128. Section 9675 of the Business and Professions Code is amended to read:

9675. This article does not apply to the following cases or to the following persons:

(a) A person acting with reference to an occasional sale of his or her own property.

(b) The regular officers of a cemetery corporation holding a certificate of authority acting with reference to the corporation's property when they receive no special compensation therefor.

(c) Persons making an occasional sale under a duly executed power of attorney from others.

(d) The services rendered by an attorney at law in performing his or her duties in that capacity.

(e) A receiver, trustee in bankruptcy, any person acting under orders of any court, or a trustee selling under a deed of trust.

(f) A real estate broker or real estate salesperson, acting in that capacity in connection with the sale, lease or exchange of real property, or interest therein, when the transfer of cemetery property is purely incidental to the sale, lease or exchange of real property.

SEC. 129. Section 9676 of the Business and Professions Code is amended to read:

9676. No person shall engage in the business of, act in the capacity of, advertise or assume to act as, a cemetery broker or cemetery salesperson in this state without first obtaining a license from the program.

SEC. 130. Section 9677 of the Business and Professions Code is amended to read:

9677. Any act other than an occasional sale of buying or selling, leasing or exchanging cemetery property or interment services of or for another or on his or her own account, or offering for another or for his or her own account to buy or sell, lease or exchange cemetery property or interment services, or negotiating the purchase or sale, lease or exchange of cemetery property or interment services, or negotiating the purchase or sale, lease or exchange, or listing or soliciting, or negotiating a loan on or leasing of cemetery property or interment services constitutes the person making such offer, sale or purchase, exchange or lease, or negotiating the loan, or listing or soliciting, a cemetery broker or cemetery salesperson.

SEC. 131. Section 9678 of the Business and Professions Code is amended to read:

9678. No person engaged in the business or acting in the capacity of a broker or a salesperson within this state shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any of the acts mentioned in this article without alleging and proving that he or she was a duly licensed

cemetery broker or cemetery salesperson at the time the alleged cause of action arose.

SEC. 132. Section 9679 of the Business and Professions Code is amended to read:

9679. No cemetery broker shall employ or compensate, directly or indirectly, any person for performing any of the acts within the scope of this article who is not a licensed cemetery broker, or a cemetery salesperson licensed under the cemetery broker employing or compensating him or her. No cemetery salesperson shall be employed by or accept compensation from any person other than the cemetery broker under whom he or she is at the time licensed.

No salesperson shall pay any compensation for performing any of the acts within the scope of this article to any licensee except through the cemetery broker under whom he or she is at the time licensed.

For a violation of any of the provisions of this section, the program may temporarily suspend or permanently revoke the license of the cemetery licensee in accordance with the provisions of this act relating to disciplinary proceedings.

SEC. 133. Section 9680 of the Business and Professions Code is amended to read:

9680. It is a misdemeanor, punishable by a fine not exceeding one hundred dollars ($100) for each offense, for any person, whether obligor, escrowholder or otherwise, to pay or deliver to anyone a compensation for performing any of the acts within the scope of this article who is not known to be or who does not present evidence to such payer that he or she is a licensed cemetery broker at the time such compensation is earned.

For violation of any of the provisions of this section, the program may temporarily suspend or permanently revoke the license of the cemetery licensee in accordance with the provisions of this act relating to disciplinary proceedings.

SEC. 134. Section 9681 of the Business and Professions Code is amended to read:

9681. Any person acting as a cemetery broker or cemetery salesperson without a license, or who advertises so as to indicate he or she is a cemetery broker without being so licensed, is guilty of a misdemeanor. If that person is a corporation, it shall be punished by a fine of not to exceed five thousand dollars ($5,000).

SEC. 135. Section 9682 of the Business and Professions Code is amended to read:

9682. Any cemetery salesperson or cemetery broker who sells, causes to be sold, or offers for sale any cemetery property upon the promise, guarantee or representation to the purchaser that the same may be resold or repurchased at a financial profit is guilty of a misdemeanor.

For violation of any of the provisions of this section, the program may temporarily suspend or permanently revoke the license of the

cemetery salesperson or cemetery broker in accordance with the provisions of this act relating to disciplinary proceedings.

No violation of any of the provisions of this section by any cemetery salesperson or employee of any licensed cemetery broker shall cause the suspension or revocation of the license of the employer of the salesperson or employee unless it appears upon a hearing by the program that the employer had guilty knowledge of such violation.

SEC. 136. Section 9683 of the Business and Professions Code is amended to read:

9683. Every officer, agent or employee of any company, and every other person who knowingly authorizes, directs or aids in the publication, advertisement, distribution, or circularization of any false statement or representation concerning any cemetery or cemetery brokerage business and every person who, with knowledge that any advertisement, pamphlet, prospectus or letter concerning any cemetery brokerage business or any written statement that is false or fraudulent, issues, circulates, publishes or distributes the same, or causes it to be issued, circulated, published or distributed, or who in any other respect willfully violates or fails, omits or neglects to obey, observe or comply with any order, permit, decision, demand or requirement of the program under the provisions of this act relating to cemetery brokerage, is guilty of a misdemeanor, and, if a cemetery licensee, he or she shall be held to trial by the program for a suspension or revocation of this cemetery license, as provided in the provisions of this act relating to disciplinary proceedings.

SEC. 137. Section 9684 of the Business and Professions Code is amended to read:

9684. Each cemetery broker, other than a cemetery corporation holding a certificate of authority, and each cemetery salesperson must include in any advertising a statement that he or she is acting as a cemetery broker or cemetery salesperson.

SEC. 138. Section 9686 of the Business and Professions Code is amended to read:

9686. Any person, other than a person making an occasional sale, who advertises cemetery property for sale or exchange, without being duly licensed as a cemetery broker or a cemetery salesperson, or without possessing a certificate of authority as a cemetery corporation, is guilty of a misdemeanor. If such person is a corporation, it shall be punished by a fine of not to exceed five thousand dollars ($5,000).

SEC. 139. Section 9700 of the Business and Professions Code is amended to read:

9700. Application for license as a cemetery broker shall be made in writing on the form prescribed by the program and filed at the principal office of the program. The application shall be accompanied by the original cemetery broker's license fee.

SEC. 140. Section 9700.5 of the Business and Professions Code is amended to read:

9700.5. The program shall not grant an original cemetery broker's license to any person who is not a resident of this state. Change of residence to another state shall terminate the license.

SEC. 141. Section 9700.6 of the Business and Professions Code is amended to read:

9700.6. The program shall not grant an original cemetery broker's license to any person who has not held a cemetery salesperson's license for at least two years prior to the date of his or her application for the broker's license, and during that time was not actively engaged in the business of a cemetery salesperson except that if an applicant for a cemetery broker's license having at least the equivalent of two years' general cemetery experience files a written petition with the program setting forth his or her qualifications and experience and the program approves, he or she may be issued a cemetery broker's license immediately upon passing the appropriate examinations and satisfying the other requirements of this article.

SEC. 142. Section 9701 of the Business and Professions Code is amended to read:

9701. Application for license as a cemetery salesperson shall be made in writing on the form prescribed by the program and filed at the principal office of the program. The application shall be signed by the applicant, and shall be accompanied by the cemetery salesperson's license fee.

SEC. 143. Section 9702.1 of the Business and Professions Code is amended to read:

9702.1. The program shall investigate the qualifications of the applicants. Except as otherwise prescribed in this article, it may issue the license applied for to an applicant on a showing satisfactory to it that the following facts exist:

(a) The applicant is properly qualified to perform the duties of a cemetery broker or salesperson.

(b) Granting the license will not be against public interest.

(c) The applicant intends actively and in good faith to carry on the business of a cemetery broker or a cemetery salesperson.

(d) In the case of a corporate applicant, the articles of incorporation permit it to act as a cemetery broker.

(e) In the case of an association or copartnership applying for such a license its articles of association or agreement of partnership authorize it to act as a cemetery broker.

(f) The license is not being secured for the purpose of permitting the applicant to advertise as a cemetery broker or salesperson without actually engaging in such business.

(g) The applicant has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

SEC. 144. Section 9702.2 of the Business and Professions Code is amended to read:

9702.2. All cemetery brokers who do not possess a certificate of authority shall in addition to the requirements of this chapter file

with the program a satisfactory bond to the people of the State of California, duly executed by a sufficient surety or sureties to be approved by the program, in the amount of ten thousand dollars ($10,000). That bond shall be conditioned for the honest and faithful performance by such broker and his or her salespersons and employees of any undertaking as a licensed cemetery broker or salesperson or employee of said broker at any time when licensed under this chapter, and the strict compliance with the provisions of this chapter and of Division 8 of the Health and Safety Code relating to cemeteries, and the honest and faithful application of all funds received. That bond shall be further conditioned upon the payment of all damages suffered by any person damaged or defrauded by reason of the violation of any of the provisions of this chapter or of Division 8 of the Health and Safety Code relating to cemeteries, or by reason of the violation of the obligation of such broker as an agent, as such obligations are laid down by the Civil Code of the State of California, or by reason of any fraud connected with or growing out of any transactions contemplated by this chapter or Division 8 of the Health and Safety Code.

SEC. 145. Section 9702.5 of the Business and Professions Code is amended to read:

9702.5. The program shall ascertain by written examination that the applicant, and, in case of a copartnership or corporation applicant for a cemetery broker's license, that each officer, agent or member thereof through whom it proposes to act as a cemetery licensee has:

(a) Appropriate knowledge of the English language, including reading, writing and spelling, and of elementary arithmetic.

(b) A fair understanding of:

(1) Cemetery associations, cemetery corporations and duties of directors.

(2) Plot ownership, deeds, certificates of ownership, contracts of sale, liens and leases.

(3) Establishing, dedicating, maintaining, managing, operating, improving and conducting a cemetery.

(4) The care, preservation and embellishment of cemetery property.

(5) The care and preservation of endowment care funds, trust funds, and the investment thereof.

(c) A general and fair understanding of the obligations between principal and agent, of the principles of cemetery brokerage practice and the business ethics pertaining thereto, as well as of the provisions of this act relating to cemetery brokerage.

SEC. 146. Section 9703 of the Business and Professions Code is amended to read:

9703. The program may, in its discretion, waive the examination of any applicant for a cemetery broker's license who held an unrevoked or unsuspended cemetery license on June 30th of the

preceding fiscal year as an individual broker, an officer of a corporation, or member of a copartnership.

SEC. 147. Section 9704 of the Business and Professions Code is amended to read:

9704. An application on the form prescribed by the program for the renewal of any unrevoked and unsuspended license filed before midnight of June 30th of the year for which such unrevoked and unsuspended license was issued, accompanied by the applicable renewal fee, entitles the applicant to continue operating under his or her existing license after its usual expiration date, if not previously suspended or revoked, and until such date as he or she is notified in writing that the application has been granted or denied.

SEC. 148. Section 9705 of the Business and Professions Code is amended to read:

9705. Upon receipt of the application and fee specified in Section 9701, the program shall issue, without examination, to any person who otherwise qualifies, a temporary salesperson's license, good for a period of three months from the date of issuance, irrespective of the fact that the fiscal year may terminate within such three months. An applicant shall not be entitled to more than one temporary license without examination.

SEC. 149. Section 9709 of the Business and Professions Code is amended to read:

9709. The cemetery licenses of both broker and salesperson shall be prominently displayed in the office of the broker.

The cemetery salesperson's license shall remain in the possession of the licensed cemetery broker employer until canceled or until the salesperson leaves the employ of the broker.

SEC. 150. Section 9710 of the Business and Professions Code is amended to read:

9710. Immediately upon the salesperson's withdrawal from the employ of the broker, the broker shall return the salesperson's license to the program for cancellation. A license canceled but not suspended or revoked may be reinstated within the fiscal year upon receipt of application therefor and the fee for the reinstatement of the license.

SEC. 151. Section 9711 of the Business and Professions Code is amended to read:

9711. Every licensed cemetery broker shall have and maintain a definite place of business in this state which shall serve as his or her office for the transaction of business.

No cemetery license authorizes the licensee to do business except from the location for which the cemetery license was issued.

Notice in writing shall be given the program of change of business location of a cemetery broker, whereupon the program shall issue a new cemetery license for the unexpired period. The change or abandonment of business location without notification to the program shall automatically cancel the license theretofore issued.

SEC. 152. Section 9712 of the Business and Professions Code is amended to read:

9712. If the applicant for a cemetery broker's license maintains more than one place of business within the state he or she shall apply for and procure an additional license for each branch office so maintained. Every such application shall state the name of the person and the location of the place of business for which such license is desired.

The program may determine whether or not a broker is doing a cemetery brokerage business at or from any particular location which requires him or her to have a branch office license.

SEC. 153. Section 9713 of the Business and Professions Code is amended to read:

9713. Each cemetery broker shall erect and maintain a sign in a conspicuous place on the premises to indicate that he or she is a licensed cemetery broker and his or her name shall be clearly shown thereon. The size and place of the sign shall conform to regulations that may be adopted by the program.

SEC. 154. Section 9714 of the Business and Professions Code is amended to read:

9714. For a violation of any of the provisions of Sections 9709, 9710, 9711 and 9713, the program may temporarily suspend or permanently revoke the license of the cemetery licensee in accordance with the provisions of this act relating to disciplinary proceedings.

SEC. 155. Section 9715 of the Business and Professions Code is amended to read:

9715. Application for a certificate of authority shall be made in writing on the form prescribed by the program and filed at the principal office of the program. The application shall be accompanied by the fee provided for in this act and shall show that the cemetery authority owns or is actively operating a cemetery in this state which is subject to the provisions of the Cemetery Act or that the applicant is in a position to commence operating a cemetery.

SEC. 156. Section 9716 of the Business and Professions Code is amended to read:

9716. The program may require such proof as it deems advisable concerning the compliance by such applicant to all the laws, rules, regulations, ordinances and orders applicable.

SEC. 157. Section 9717 of the Business and Professions Code is amended to read:

9717. (a) The program shall adopt, and may from time to time amend, rules and regulations prescribing standards of knowledge and experience and financial responsibility for applicants for certificates of authority. In reviewing an application for a certificate of authority, the program may consider acts of incorporators, officers, directors, and stockholders of the applicant, which shall constitute

grounds for the denial of a certificate of authority under Division 1.5 (commencing with Section 475).

(b) Upon receipt of an application for a certificate of authority, the program may cause an investigation to be made of the physical status, plans, specifications and financing of the proposed cemetery, and any other qualifications required of the applicant under this act, and for this purpose may subpoena witnesses, administer oaths, and take testimony.

At the time of the filing of the application required by this section, the applicant shall pay to the Cemetery Fund the sum fixed by the program at not in excess of four hundred dollars ($400) to defray the expenses of investigation. In the event the sum shall be insufficient to defray all of the expenses, the applicant shall within five days after request therefor deposit an additional sum sufficient to defray such expenses, provided that the total sum shall not exceed the sum of nine hundred dollars ($900).

SEC. 158. Section 9718 of the Business and Professions Code is amended to read:

9718. The program may, in accordance with its rules and regulations, authorize interments in cemeteries for which there is no currently valid certificate of authority outstanding if the program finds that rights to interment therein will otherwise be impaired. However, nothing in this section authorizes sales of lots, vaults, or niches by cemeteries for which there is no currently valid certificate of authority. Interments permitted under this section shall be conducted by persons authorized by the program in accordance with its regulations, and Section 9768 shall not be applicable to such interments.

The program or its representative shall be entitled to inspect and copy any cemetery records necessary to the performance of interments under this section, and any person having custody of those records shall permit inspection and copying thereof for that purpose. The program may apply to the superior court for the county in which the cemetery is located for an order temporarily transferring custody of cemetery records to it for purposes of this section.

SEC. 159. Section 9719 of the Business and Professions Code is amended to read:

9719. The program shall inspect the books, records, and premises of any crematory licensed under this chapter or any certificate of authority holder operating a crematory. In making those inspections, the program shall have access to all books and records, the crematory building, the cremation chambers or furnaces, and the storage areas for human remains before and after cremation, during regular office hours or the hours the crematory is in operation. No prior notification of the inspection is required to be given to the certificate of authority holder or the crematory licensee. If any certificate of authority holder or any crematory licensee fails to allow that inspection or any part

thereof, it shall be grounds for the suspension or revocation of a license or other disciplinary action against the licensee. In the case of a certificate of authority holder, the suspension, revocation, or other disciplinary action may be limited to the operation of the crematory. All proceedings under this section shall be conducted in accordance with the provisions of this chapter relating to disciplinary proceedings.

SEC. 160. Section 9720 of the Business and Professions Code is amended to read:

9720. The program shall annually conduct a minimum of one unannounced inspection of each licensed crematory.

SEC. 161. Section 9726 of the Business and Professions Code is amended to read:

9726. The program may, upon its own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a cemetery licensee, and may temporarily suspend or permanently revoke a license at any time where the licensee, within the immediately preceding three years, while a cemetery licensee in performing or attempting to perform any of the acts specified in this act, has been guilty of any of the following:

(a) Making any substantial misrepresentation.

(b) Making any false statement of a character likely to influence or persuade.

(c) A continued and flagrant course of misrepresentation or making of false promises through cemetery agents or salespersons.

(d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.

(e) Commingling the money or other property of his or her principal with his or her own.

(f) The practice of claiming or demanding a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to sell, buy or exchange cemetery property for compensation or commission where such agreement does not contain a definite, specified date of final and complete termination.

(g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of such licensee the full amount of such licensee's compensation, commission or profit under any agreement authorizing or employing such licensee to sell, buy or exchange cemetery property for compensation or commission prior to or coincident with the signing of such agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of such agreement, whether evidenced by documents in an escrow or by any other or different procedure.

(h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing such licensee to sell, buy, or exchange cemetery property for

compensation or commission, except when such licensee prior to or coincident with election to exercise such option to purchase reveals in writing to the employer the full amount of licensee's profit and obtains the written consent of the employer approving the amount of such profit.

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

The misrepresentations and false statements mentioned in this section include also misrepresentation and false statements as to other property than that which the cemetery licensee may be selling or attempting to sell.

SEC. 162. Section 9727 of the Business and Professions Code is amended to read:

9727. The program may suspend or revoke the license of any cemetery licensee who, within three years immediately preceding has done any of the following:

(a) Been convicted of a crime substantially related to the qualifications, functions and duties of such licensee. The record of conviction, or a certified copy thereof, shall be conclusive evidence of such conviction.

(b) Knowingly authorized, directed, connived at or aided in the publication, advertisement, distribution, or circulation of any material false statement or representation concerning his or her business or any cemetery property offered for sale.

(c) Willfully disregarded or violated any of the provisions of this act relating to cemetery brokerage.

(d) Acted or conducted himself or herself in a manner which would have warranted the denial of his or her application for a cemetery license, or for a renewal thereof.

SEC. 163. Section 9727.1 of the Business and Professions Code is amended to read:

9727.1. The program may suspend or revoke the license of any cemetery licensee who procures a cemetery license, for himself or herself or any salesperson, by fraud, misrepresentation or deceit. An action to suspend or revoke a license for a violation of the provisions of this section shall be commenced within three years after the discovery by the program of that violation.

SEC. 164. Section 9727.2 of the Business and Professions Code is amended to read:

9727.2. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this article. The program may order the license suspended or revoked, or may decline to issue a license, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code allowing such person

to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information or indictment.

SEC. 165. Section 9728 of the Business and Professions Code is amended to read:

9728. When any salesperson is discharged by his or her employer for a violation of any of the provisions of this article prescribing a ground for disciplinary action, a verified written statement of the facts with reference thereto shall be filed forthwith with the program by the employer and, if the employer fails to notify the program as required by this section, the program may temporarily suspend or permanently revoke the cemetery license of the employer in accordance with the provisions of this act.

SEC. 166. Section 9729 of the Business and Professions Code is amended to read:

9729. The program may deny, suspend or revoke the cemetery license of a corporation as to any officer or agent acting under its cemetery license, and the cemetery license of a copartnership as to any member acting under its cemetery license, without revoking the cemetery license of the corporation or of the copartnership.

SEC. 167. Section 9730 of the Business and Professions Code is amended to read:

9730. The fees for cemetery licenses at all periods of the fiscal year is the same as provided in this article. All cemetery license fees are payable in advance of issuing the licenses and at the time of filing the application. Except a temporary salesperson's license, for which other provision is made, all licenses shall be issued for the fiscal year and shall expire on June 30th of each fiscal year at midnight.

SEC. 168. Section 9731 of the Business and Professions Code is amended to read:

9731. If a person fails to apply for a renewal of his or her license prior to midnight of June 30th of the year for which the license was issued, no renewal license shall be issued to him or her except upon payment of the renewal fee for the license, plus 50 percent of the renewal fee, but not more than the renewal fee plus twenty-five dollars ($25).

No person who fails to renew his or her license within one year of the expiration date can engage in any of the activities authorized by such a license unless he or she first files the application required for an original license, pays the original license fee, and otherwise complies with all of the provisions of this act pertaining to the issuance of an original license.

SEC. 169. Section 9735 of the Business and Professions Code is amended to read:

9735. An original cemetery salesperson's license is a cemetery license issued to a person who did not have a cemetery salesperson's or a broker's license either individually or as an officer of a corporation, or as a member of a copartnership, on June 30th of the

fiscal year previous to the fiscal year for which the salesperson's license is issued.

SEC. 170. Section 9736 of the Business and Professions Code is amended to read:

9736. A renewal cemetery salesperson's license is a cemetery license issued to a person who had a cemetery salesperson's or a broker's license either individually or as an officer of a corporation, or as a member of a copartnership, on June 30th of the fiscal year previous to the fiscal year for which the salesperson's license is issued.

SEC. 171. Section 9737 of the Business and Professions Code is amended to read:

9737. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 2 of Title 2 of the Government Code, and the program shall have all the powers granted therein.

SEC. 172. Section 9740 of the Business and Professions Code is amended to read:

9740. No person shall dispose of or offer to dispose of any cremated human remains unless registered as a cremated remains disposer by the program. This article shall not apply to any person, partnership, or corporation holding a certificate of authority as a cemetery, crematory license, cemetery broker's license, cemetery salesperson's license, or funeral director's license, nor shall this article apply to any person having the right to control the disposition of the cremated remains of any person or that person's designee if the person does not dispose of or offer to dispose of more than 10 cremated human remains within any calendar year.

SEC. 173. Section 9741 of the Business and Professions Code is amended to read:

9741. Registration shall be on the form prescribed by the program and shall include, but not be limited to, the full name of the registrant, business and residence addresses, description and identification of aircraft or boats which may be used in dispensing cremated human remains, and the area to be served. Each registration application shall be accompanied by the cremated remains disposer fee.

SEC. 173.5. Section 9741 of the Business and Professions Code is amended to read:

9741. (a) Registration shall be on the form prescribed by the program and shall include, but not be limited to, the full name of the registrant, business and residence addresses, description and identification of aircraft or boats which may be used in dispensing cremated human remains, and the area to be served. Each registration application shall be accompanied by the cremated remains disposer fee.

(b) Every registered cremated remains disposer who dispenses human remains by air shall post a copy of his or her current pilot's license, and the address of the cremated remains storage area at his or her place of business. Every registered cremated remains disposer

who dispenses human remains by boat shall post a copy of his or her current boating license and the address of the cremated remains storage area at his or her place of business.

SEC. 174. Section 9742 of the Business and Professions Code is amended to read:

9742. All aircraft used for the scattering of cremated human remains shall be validly certified by the Federal Aviation Administration. All boats or vessels used for the scattering of cremated human remains shall be registered with the Department of Motor Vehicles or documented by a federal agency, as appropriate. The certification or registration shall be available for inspection by the program.

SEC. 176. Section 9746 of the Business and Professions Code is amended to read:

9746. All cremated remains disposer registrations shall expire at midnight on September 30th of each year. A person desiring to renew his or her registration shall file an application for renewal on a form prescribed by the program accompanied by the required fee. The program shall not renew the registration of any person who has not filed the required annual report until he or she has filed a complete annual report with the department.

SEC. 177. Section 9749.5 of the Business and Professions Code is amended to read:

9749.5. A cremated remains disposer shall be subject to and shall be disciplined by the program in accordance with Article 6 (commencing with Section 9725). Any violation of this article shall also be grounds for disciplinary action.

SEC. 178. Section 9751 of the Business and Professions Code is amended to read:

9751. The original cemetery broker's license fee shall be fixed by the program at not more than four hundred dollars ($400).

SEC. 179. Section 9752 of the Business and Professions Code is amended to read:

9752. The original cemetery broker's license fee is payable at the time of the filing of an application for an original cemetery broker's license.

If the applicant fails the required written examination, he or she may be permitted to take another examination upon the filing of an application for reexamination and the payment of a reexamination fee. This reexamination fee shall be fixed by the program at not more than one hundred dollars ($100).

No part of any original cemetery broker's license fee or reexamination fee is refundable. It is deemed earned upon receipt by the program, whether the accompanying application for a license is complete or incomplete.

SEC. 180. Section 9753 of the Business and Professions Code is amended to read:

9753. The annual renewal fee for a cemetery broker's license shall be fixed by the program at not more than three hundred dollars ($300).

SEC. 181. Section 9754 of the Business and Professions Code is amended to read:

9754. If the licensee is a cemetery brokerage corporation, the license issued to it entitles one officer only, on behalf of the corporation, to engage in the business of a cemetery broker without the payment of a further fee, that officer to be designated in the application of the corporation for a license. For each other officer of a licensed cemetery brokerage corporation, through whom it engages in the business of a cemetery broker, the annual renewal fee, in addition to the fee paid by the corporation, shall be fixed by the department at not more than one hundred dollars ($100).

SEC. 182. Section 9755 of the Business and Professions Code is amended to read:

9755. If the licensee is a cemetery brokerage copartnership, the license issued to it entitles one member only of the copartnership to engage on behalf of the copartnership in the business of a cemetery broker, which member shall be designated in the application of the copartnership for a license. For each other member of the copartnership who on behalf of the copartnership engages in the business of a cemetery broker, the annual renewal fee, in addition to the fee paid by the copartnership, shall be fixed by the program at not more than one hundred dollars ($100).

SEC. 183. Section 9756 of the Business and Professions Code is amended to read:

9756. The cemetery salesperson's license fee shall be fixed by the program at not more than thirty dollars ($30).

SEC. 184. Section 9758 of the Business and Professions Code is amended to read:

9758. No part of any original or temporary cemetery salesperson's license fee is refundable. It is deemed earned upon receipt by the program, whether the accompanying application for a license is complete or incomplete.

SEC. 185. Section 9759 of the Business and Professions Code is amended to read:

9759. The annual renewal fee for a cemetery salesperson's license shall be fixed by the program at not more than twenty-five dollars ($25).

SEC. 186. Section 9760 of the Business and Professions Code is amended to read:

9760. For a branch office broker's license, the fee shall be fixed by the program at not more than one hundred dollars ($100).

SEC. 187. Section 9761 of the Business and Professions Code is amended to read:

9761. For change of name or of address of licensee on the records of the program, the fee shall be fixed by the program at not more than twenty-five dollars ($25).

SEC. 188. Section 9762 of the Business and Professions Code is amended to read:

9762. For transfer of a salesperson's license on change of employer, the fee shall be fixed by the program at not more than twenty-five dollars ($25).

SEC. 189. Section 9763 of the Business and Professions Code is amended to read:

9763. For a duplicate license the fee shall be fixed by the program at not more than twenty-five dollars ($25).

SEC. 190. Section 9764 of the Business and Professions Code is amended to read:

9764. For reinstatement of a license within the fiscal year, the fee shall be fixed by the program at not more than twenty-five dollars ($25).

As used in this section, "reinstatement of a license" means the reissuance of a canceled cemetery broker's license, or a cemetery salesperson's license which was canceled during the year for which it was issued upon the salesperson's withdrawal from the employ of a cemetery broker.

SEC. 191. Section 9765 of the Business and Professions Code is amended to read:

9765. Every cemetery authority operating a cemetery shall pay an annual regulatory charge for each cemetery to be fixed by the program at not more than four hundred dollars ($400). In addition to an annual regulatory charge for each cemetery, an additional quarterly charge of not more than eight dollars and fifty cents ($8.50) for each burial, entombment, or inurnment, and not more than eight dollars and fifty cents ($8.50) for each cremation made during the preceding quarter shall be paid to the department and these charges shall be deposited in the Cemetery Fund. If the cemetery authority performed the cremation and either the burial, entombment, or inurnment, the total of all additional charges shall be not more than eight dollars and fifty cents ($8.50).

Notwithstanding any other provision of law, including any provision contained in the Budget Act of 1996, this section shall remain in effect until the loans authorized by Chapter 38, Statutes of 1996, and by Chapter 162, Statutes of 1996, are repaid, with interest at the rate accruing to moneys in the Pooled Money Investment Account, but no later than April 1, 2003, pursuant to a loan repayment plan approved by the Department of Finance.

SEC. 192. Section 9766 of the Business and Professions Code is amended to read:

9766. Upon payment of the charges set forth, the program shall issue a renewal of the certificate of authority to the cemetery authority.

SEC. 193. Section 9767 of the Business and Professions Code is amended to read:

9767. Failure to pay the charges set forth by Section 9765 of this code prior to February 1st for each year shall be cause for suspension of the certificate of authority. The certificate may be restored upon payment to the program of the prescribed charges.

SEC. 194. Section 9769 of the Business and Professions Code is amended to read:

9769. All moneys received by the program under the provisions of this chapter shall be accounted for and reported by detailed statements furnished by the program to the Controller at least once a month, and at the same time these moneys shall be remitted to the Treasurer, and, upon order of the Controller, shall be deposited in the Cemetery Fund in the State Treasury, which fund is hereby created.

SEC. 195. Section 9780 of the Business and Professions Code is amended to read:

9780. A crematory established, operated, or maintained, other than by a licensed cemetery authority, may be operated by a corporation, partnership, or natural person, provided that a valid crematory license shall have been issued by the program.

SEC. 196. Section 9781 of the Business and Professions Code is amended to read:

9781. Application for a crematory license shall be made in writing on the form prescribed by the program and filed at the principal office of the program. The application shall be accompanied by the fee provided for in this article and shall show that the applicant owns or is actively operating a crematory in this state or that the applicant is in a position to commence operating such a crematory.

SEC. 197. Section 9782 of the Business and Professions Code is amended to read:

9782. The program may require such proof as it deems advisable concerning the compliance by such applicant with all the laws, rules, regulations, ordinances, and orders applicable to the applicant and shall not issue such crematory license until it has satisfied itself that the public interest will be served by such applicant.

SEC. 198. Section 9783 of the Business and Professions Code is amended to read:

9783. (a) The program shall adopt, and may from time to time amend, rules and regulations prescribing standards of knowledge and experience and financial responsibility for applicants for a crematory license. In reviewing an application for a crematory license, the department may consider acts of the applicant, including acts of incorporators, officers, directors, and stockholders of the applicant, which shall constitute grounds for the denial of a crematory license under Division 1.5 (commencing with Section 475).

(b) Upon receipt of an application for a crematory license, the program may cause an investigation to be made of the physical status,

plans, specifications, and financing of the proposed crematory, the character of the applicant, including, if applicable, its officers, directors, shareholders, or members, and any other qualifications required of the applicant under this article, and for this purpose may subpoena witnesses, administer oaths, and take testimony.

At the time of the filing of the application required by this article, the applicant shall pay to the Cemetery Fund the sum fixed by the program at not in excess of four hundred dollars ($400) to defray the expenses of investigation. In the event the sum shall be insufficient to defray all of the expenses, the applicant shall within five days after request therefor deposit an additional sum sufficient to defray such expenses, provided that the total sum shall not exceed the sum of nine hundred dollars ($900).

SEC. 199. Section 9784 of the Business and Professions Code is amended to read:

9784. No crematory licensee under this article shall conduct any cremations:

(a) Unless the licensee has a written contract with the person or persons entitled to custody of the remains clearly stating the location, manner, and time of disposition to be made of the remains, agreeing to pay the regular fees of the licensee for cremation, disposition, and other services rendered, and any other contractual provisions as may be required by the program.

(b) Of any remains more than 24 hours after delivery of the remains, unless the remains have been preserved in the interim by refrigeration or embalming.

(c) Unless the licensee has a contractual relationship with a licensed cemetery authority for final disposition of cremated human remains by burial, entombment or inurnment of any and all remains which are not lawfully disposed of or which are not called for or accepted by the person or persons entitled to the custody and control of the disposition thereof within 90 days of the date of death.

SEC. 200. Section 9785 of the Business and Professions Code is amended to read:

9785. Each crematory licensee shall keep such records as may be required by the program to assure compliance with all laws relating to the disposition of cremated human remains and shall file annually with the program, a report in the form prescribed by the program, describing the operations of the licensee, including the number of cremations made, the disposition thereof, and any other information as the program may, from time to time, require.

SEC. 201. Section 9786 of the Business and Professions Code is amended to read:

9786. Every crematory licensee operating a crematory pursuant to a license issued in compliance with this article shall pay an annual regulatory charge for each crematory, to be fixed by the program at not more than four hundred dollars ($400). In addition to an annual regulatory charge for each crematory, every licensee operating a

crematory pursuant to a license issued pursuant to this article shall pay an additional charge of not more than eight dollars and fifty cents ($8.50) per cremation made during the preceding quarter, which charges shall be deposited in the Cemetery Fund.

Notwithstanding any other provision of law, including any provision contained in the Budget Act of 1996, this section shall remain in effect until the loans authorized by Chapter 38, Statutes of 1996, and by Chapter 162, Statutes of 1996, are repaid, with interest at the rate accruing to moneys in the Pooled Money Investment Account, but no later than April 1, 2003, pursuant to a loan repayment plan approved by the Department of Finance.

SEC. 202. Section 9787 of the Business and Professions Code is amended to read:

9787. Each crematory for which a crematory license is required shall be operated under the supervision of a manager qualified as such in accordance with rules adopted by the program. Each manager shall be required to successfully pass a written examination evidencing an understanding of the applicable provisions of this code and of the Health and Safety Code of this state.

SEC. 203. Section 9789 of the Business and Professions Code is amended to read:

9789. A crematory licensee shall be subject to and shall be disciplined by the program in accordance with Article 6 (commencing with Section 9725).

SEC. 204. Section 9880.2 of the Business and Professions Code is amended to read:

9880.2. The following persons are exempt from the requirement of registration:

(a) An employee of an automotive repair dealer if the employee repairs motor vehicles only as an employee.

(b) A person who solely engages in the business of repairing the motor vehicles of one or more commercial, industrial, or governmental establishments.

(c) A person who is registered pursuant to Chapter 20 (commencing with Section 9800) and whose work is limited to the installation or replacement of a motor vehicle radio, antenna, audio recorder, audio playback equipment, or burglar alarm.

(d) A person whose primary business is the wholesale supply of new or rebuilt automotive parts who solely engages in the remachining of individual automotive parts without compensation for warranty adjustments to those parts and who does not engage in repairing or diagnosing malfunctions of motor vehicles or motorcycles. "Primary business" means the business that accounts for the majority of the company's gross sales. "Wholesale supply" means the sale, by a seller who possesses a California Resale Permit, of automotive parts to a retailer or jobber for the purpose of resale. However, a person described in this subdivision, prior to commencing work, shall do both of the following:

(1) Provide a notice containing the bureau's toll-free telephone number to the customer that the person is not regulated by the bureau.

(2) Provide a written description of the remachining services to be performed to the customer.

SEC. 205. Section 9884 of the Business and Professions Code is amended to read:

9884. (a) An automotive repair dealer shall pay the fee required by this chapter for each place of business operated by the dealer in this state and shall register with the director upon forms prescribed by the director. The forms shall contain sufficient information to identify the automotive repair dealer, including name, address of each location, a statement by the dealer that each location is in an area that, pursuant to local zoning ordinances, permits the operation of a facility for the repair of motor vehicles, the dealer's retail seller's permit number, if a permit is required under the Sales and Use Tax Law (Part 1 (commencing with Section 6001), Division 2, Revenue and Taxation Code), and other identifying data that are prescribed by the director. If the business is to be carried on under a fictitious name, the fictitious name shall be stated. To the extent prescribed by the director, an automotive repair dealer shall identify the owners, directors, officers, partners, managers and any other persons who directly or indirectly control or conduct the business. The forms shall include a statement signed by the dealer under penalty of perjury that the information provided is true.

(b) A state agency is not authorized or required by this section to enforce a city, county, regional, air pollution control district, or air quality management district rule or regulation regarding the site or operation of a facility that repairs motor vehicles.

SEC. 206. Section 9884.3 of the Business and Professions Code is amended to read:

9884.3. Every registration shall cease to be valid one year from the last day of the month in which registration was issued unless the automotive repair dealer has paid the renewal fee required by this chapter.

SEC. 206.5. Section 9884.5 is added to the Business and Professions Code, to read:

9884.5. A registration that is not renewed within three years following its expiration shall not be renewed, restored, or reinstated thereafter, and the delinquent registration shall be canceled immediately upon expiration of the three-year period.

An automotive repair dealer whose registration has been canceled by operation of this section shall obtain a new registration only if he or she again meets the requirements set forth in this chapter relating to registration, is not subject to denial under Section 480, and pays the applicable fees.

An expired registration may be renewed at any time within three years after its expiration upon the filing of an application for renewal

on a form prescribed by the bureau and the payment of all accrued renewal and delinquency fees. Renewal under this section shall be effective on the date on which the application is filed and all renewal and delinquency fees are paid. If so renewed, the registration shall continue in effect through the expiration date of the current registration year as provided in Section 9884.3, at which time the registration shall be subject to renewal.

SEC. 207. Section 9886.2 of the Business and Professions Code is amended to read:

9886.2. The money in the Vehicle Inspection and Repair Fund necessary for the administration of this chapter and Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code is available to the department, when appropriated for those purposes.

SEC. 208. Article 10 (commencing with Section 9889.30) of Chapter 20.3 of Division 3 of the Business and Professions Code is repealed.

SEC. 209. Section 9889.8 of the Business and Professions Code is amended to read:

9889.8. All accusations against licensees shall be filed within three years after the act or omission alleged as the ground for disciplinary action, except that with respect to an accusation alleging a violation of subdivision (e) of Section 9889.3, the accusation may be filed within two years after the discovery by the bureau of the alleged facts constituting the fraud or misrepresentation prohibited by such section.

SEC. 210. Section 18740 of the Business and Professions Code is repealed.

SEC. 211. Section 15633.5 of the Welfare and Institutions Code is amended to read:

15633.5. (a) Information relevant to the incident of elder or dependent adult abuse may be given to an investigator from an adult protective services agency, a local law enforcement agency, or the Bureau of Medi-Cal Fraud or investigators of the Department of Consumer Affairs, Division of Investigation who are investigating the known or suspected case of elder or dependent adult abuse.

(b) The identity of all persons who report under this chapter shall be confidential and disclosed only among adult protective services agencies, long-term care ombudsman programs, licensing agencies, local law enforcement agencies, the bureau, and the Division of Investigation to counsel representing an adult protective services agency, long-term care ombudsman program, licensing agency, or a local law enforcement agency, by the bureau to the district attorney in a criminal prosecution, when persons reporting waive confidentiality, or by court order.

(c) Notwithstanding subdivisions (a) and (b), any person reporting pursuant to Section 15631 shall not be required to include his or her name in the report.

SEC. 212. Section 65.5 of this bill incorporates amendments to Section 7685.2 of the Business and Professions Code proposed by both this bill and AB 1705. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1999, (2) each bill amends Section 7685.2 of the Business and Professions Code, and (3) this bill is enacted after AB 1705, in which case Section 65 of this bill shall not become operative.

SEC. 213. Section 173.5 of this bill incorporates amendments to Section 9741 of the Business and Professions Code proposed by both this bill and AB 1705. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1999, (2) each bill amends Section 9741 of the Business and Professions Code, and (3) this bill is enacted after AB 1705, in which case Section 173 of this bill shall not become operative.

CHAPTER 971

An act to amend Sections 130, 4929, 4930, and 4955 of, to add Sections 731 and 4929.5 to, and to repeal and add Section 4961 of, the Business and Professions Code, relating to consumer affairs.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. 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 Board.
(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) Landscape Architect Technical Committee.
(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 Committee.
(26) The Board of Psychology.

SEC. 2. Section 731 is added to the Business and Professions Code, to read:

731. (a) Any person licensed, certified, registered, or otherwise subject to regulation pursuant to this division who engages in, or who aids or abets in, a violation of Section 266h, 266i, 315, 316, or 318 of, or subdivision (a) or (b) of Section 647 of, the Penal Code occurring in the work premises of, or work area under the direct professional supervision or control of, that person, shall be guilty of unprofessional conduct. The license, certification, or registration of that person shall be subject to denial, suspension, or revocation by the appropriate regulatory entity under this division.

(b) In addition to any penalty provided under any other provision of law, a violation of subdivision (a) shall subject the person to a civil penalty in an amount not to exceed two thousand five hundred dollars ($2,500) for the first offense, and not to exceed five thousand dollars ($5,000) for each subsequent offense, which may be assessed and recovered in a civil action brought by any district attorney. If the action is brought by a district attorney, the penalty recovered shall be paid to the treasurer of the county in which the judgment was entered.

SEC. 3. Section 4929 of the Business and Professions Code is amended to read:

4929. Four members of the committee shall be acupuncturists with at least five years of experience in acupuncture and not licensed as physicians and surgeons, one member of the committee shall be a physician and surgeon licensed in this state with two years of experience in acupuncture, and four members shall be public members who do not hold a license or certificate as a physician and surgeon or acupuncturist.

The Governor shall appoint the four acupuncturist members qualified as provided in this section, who shall be appointed to represent a cross section of the cultural backgrounds of licensed members of the acupuncturist profession, two of the public members, and the licensed physician and surgeon member qualified as provided in this section. All members appointed to the committee by the Governor shall be subject to confirmation by the Senate. The Senate Rules Committee and the Speaker of the Assembly shall each

appoint a public member. Any member of the committee may be removed by the appointing power for neglect of duty, misconduct, or malfeasance in office, after being provided with a written statement of the charges and an opportunity to be heard.

SEC. 4. Section 4929.5 is added to the Business and Professions Code, to read:

4929.5. In the reduction of the membership of the committee or a successor board or entity from 11 to 9 members, the following transition provisions shall apply:

(a) Upon the first expiration, after January 1, 1999, of the term of a physician and surgeon member, the committee shall be reduced to 10 members, five of whom shall be acupuncturist members, one of whom shall be a physician and surgeon, and four of whom shall be public members. Notwithstanding any other provision of law, the term of that physician and surgeon member shall not be extended for any reason.

(b) Upon the first expiration, after January 1, 2000, of the term of an acupuncturist member, the committee shall be reduced to nine members, four of whom shall be acupuncturist members, one of whom shall be a physician and surgeon, and four of whom shall be public members. Notwithstanding any other provision of law, the term of that acupuncturist member shall not be extended for any reason.

SEC. 5. Section 4930 of the Business and Professions Code is amended to read:

4930. Each member of the committee shall be appointed for a term of four years.

SEC. 6. Section 4955 of the Business and Professions Code is amended to read:

4955. The committee may deny, suspend, or revoke, or impose probationary conditions upon, the license of any acupuncturist if he or she is guilty of unprofessional conduct that has endangered or is likely to endanger the health, safety, or welfare of the public.

Unprofessional conduct shall include, but not be limited to, the following:

(a) Securing a license by fraud or deceit.

(b) Committing a fraudulent or dishonest act as an acupuncturist resulting in substantial injury to another.

(c) Using any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or dangerous drug or alcoholic beverage to an extent or in a manner dangerous to himself or herself, or to any other person, or to the public, and to an extent that the use impairs his or her ability to engage in the practice of acupuncture with safety to the public.

(d) Conviction of a crime substantially related to the qualifications, functions, or duties of an acupuncturist, the record of conviction being conclusive evidence thereof.

(e) Improper advertising.

(f) Violating or conspiring to violate the terms of this chapter.
(g) Gross negligence.
(h) Repeated negligent acts.
(i) Incompetence.
(j) Except for good cause, the knowing failure to protect patients by failing to follow infection control guidelines of the committee, thereby risking transmission of blood-borne infectious diseases from licensee to patient, from patient to patient, and from patient to licensee. In administering this subdivision, the committee shall consider referencing the standards, regulations, and guidelines of the State Department of Health Services developed pursuant to Section 1250.11 of the Health and Safety Code and the standards, regulations, and guidelines pursuant to the California Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne pathogens in health care settings. As necessary, the committee shall consult with the Medical Board of California, the California Board of Podiatric Medicine, the Board of Dental Examiners of the State of California, the Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to encourage appropriate consistency in the implementation of this subdivision.

The committee shall seek to ensure that licensees are informed of the responsibility of licensees and others to follow infection control guidelines, and of the most recent scientifically recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

(k) The revocation, suspension, or other discipline, restriction, or limitation imposed by another state upon a license or certificate to practice acupuncture issued by that state, or the revocation, suspension, or restriction of the authority to practice acupuncture by an agency of the federal government, on grounds that would have been grounds for disciplinary action in California of a licensee under this chapter.

SEC. 7. Section 4961 of the Business and Professions Code is repealed.

SEC. 8. Section 4961 is added to the Business and Professions Code, to read:

4961. (a) Every person who is now or hereafter licensed to practice acupuncture in this state shall register, on forms prescribed by the Acupuncture Committee, his or her place of practice, or, if he or she has more than one place of practice, all of the places of practice. If the licensee has no place of practice, he or she shall notify the committee of that fact. A person licensed by the committee shall register within 30 days after the date of his or her licensure.

(b) An acupuncturist licensee shall post his or her license in a conspicuous location in his or her place of practice at all times. If an acupuncturist has more than one place of practice, he or she shall

obtain from the committee a duplicate license for each additional location and post the duplicate license at each location.

(c) Any licensee that changes the location of his or her place of practice shall register each change within 30 days of making that change. In the event a licensee fails to notify the committee of any change in the address of a place of practice within the time prescribed by this section, the committee may deny renewal of licensure. An applicant for renewal of licensure shall specify in his or her application whether or not there has been a change in the location of his or her place of practice and, if so, the date of that change. The committee may accept that statement as evidence of the change of address.

CHAPTER 972

An act to amend Sections 11126, 24008, 25639, 51102, 51113, 51133, and 61601.25 of the Government Code, to amend Sections 13132.7 and 42311.2 of the Health and Safety Code, to amend Section 1547 of the Penal Code, to amend Sections 700, 712, 730, 731.1, 4002, 4129, 4521.3, 4604, 4662, 4789.2, 5093.52, 5093.68, 30404, and 30417 of, and to amend the heading of Article 2 (commencing with Section 730) of Chapter 2.5 of Division 1 of, the Public Resources Code, and to amend Sections 431 and 434 of the Revenue and Taxation Code, relating to forestry.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 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 and Fire Protection, 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 24008 of the Government Code is amended to read:

24008. (a) The board of supervisors may appoint a county fire warden and assistant and deputy county fire wardens as it may consider necessary. The county fire warden shall aid in enforcing all laws and ordinances and any rules or regulations adopted by the State Board of Forestry and Fire Protection and by the State Fire Marshal relating to fires or to fire prevention and protection. The county fire warden and the county fire warden's deputies and assistants shall perform those duties relating to fires or to fire protection and prevention required by the board of supervisors. The county fire warden, and any assistant and deputy county fire wardens that are designated by the county fire warden, have the powers of peace officers to make arrests without warrant for violation of any state, county, or federal fire laws, and are not liable to civil action for trespass committed in the discharge of their duties. In making any arrests, the county fire warden, and the county fire warden's assistants and deputies shall follow the procedure prescribed in Sections 4157 and 4158 of the Public Resources Code. The county fire warden and the county fire warden's assistants and deputies shall serve at the pleasure of the board of supervisors and shall be paid salaries and receive reimbursement for mileage while traveling on official business as determined by the board.

(b) Notwithstanding any other provision of this section to the contrary, if the board of supervisors of a county, in which a civil service system has been created for county officers and employees, determines that it is necessary to provide for the appointment of a county fire warden and assistant and deputy county fire wardens, that county fire warden and those assistants and deputies shall be selected and appointed pursuant to the provisions relating to that civil service system and the persons so appointed shall be entitled to all of the rights and privileges, and subject to all of the provisions, provided by the system in the same manner and to the same extent as other county officers and employees included in the system. This paragraph does not apply to any county in which the office of county fire warden, or any assistant or deputy county fire warden is excluded from the civil service system.

SEC. 3. Section 25639 of the Government Code is amended to read:

25639. Any county may appropriate and expend money from the general fund of the county, either within or without the county, for cooperation with the State Board of Forestry and Fire Protection, the United States Forest Service, or the California Forest Experiment

Station in investigations relating to watershed protection, reforestation, and afforestation, when those investigations are for the benefit of the county.

SEC. 4. Section 51102 of the Government Code is amended to read:

51102. (a) The Legislature further declares that to fully realize the productive potential of the forest resources and timberlands of the state, and to provide a favorable climate for long-term investment in forest resources, it is the policy of this state to do all of the following:

(1) Maintain the optimum amount of the limited supply of timberland to ensure its current and continued availability for the growing and harvesting of timber and compatible uses.

(2) Discourage premature or unnecessary conversion of timberland to urban and other uses.

(3) Discourage expansion of urban services into timberland.

(4) Encourage investment in timberlands based on reasonable expectation of harvest.

(b) The Legislature further declares that it is the policy of this state that timber operations conducted in a manner consistent with forest practice rules adopted by the State Board of Forestry and Fire Protection shall not be or become restricted or prohibited due to any land use in or around the locality of those operations.

SEC. 5. Section 51113 of the Government Code is amended to read:

51113. (a) (1) An owner may petition the board or council to zone his or her land as timberland production. The board or council by ordinance, after the advice of the planning commission pursuant to Section 51110.2, and after public hearing, shall zone as timberland production all parcels submitted to it by petition pursuant to this section, which meet all of the criteria adopted pursuant to subdivision (c). Any owner who has so petitioned and whose land is not zoned as timberland production may petition the board or council for a rehearing on the zoning.

(2) This section shall not be construed as limiting the ability of the board or council to zone as timberland production any parcel submitted upon petition that is timberland, defined pursuant to subdivision (f) of Section 51104, and which is in compliance with the compatible use ordinance adopted by the board or council pursuant to Section 51111.

(b) The board or council, on or before March 1, 1977, by resolution, shall adopt procedures for initiating, filing, and processing petitions for timberland production zoning and for rezoning. The rules shall be applied uniformly throughout the county or city.

(c) On or before March 1, 1977, the board or council by ordinance shall adopt a list of criteria required to be met by parcels being considered for zoning as timberland production under this section. The criteria shall not impose any requirements in addition to those

listed in this subdivision and in subdivision (d). The following shall be included in the criteria:

(1) A map shall be prepared showing the legal description or the assessor's parcel number of the property desired to be zoned.

(2) A plan for forest management shall be prepared or approved as to content, for the property by a registered professional forester. The plan shall provide for the eventual harvest of timber within a reasonable period of time, as determined by the preparer of the plan.

(3) (A) The parcel shall currently meet the timber stocking standards as set forth in Section 4561 of the Public Resources Code and the forest practice rules adopted by the State Board of Forestry and Fire Protection for the district in which the parcel is located, or the owner shall sign an agreement with the board or council to meet those stocking standards and forest practice rules by the fifth anniversary of the signing of the agreement. If the parcel is subsequently zoned as timberland production under subdivision (a), failure to meet the stocking standards and forest practice rules within this time period provides the board or council with a ground for rezoning of the parcel pursuant to Section 51121.

(B) Upon the fifth anniversary of the signing of an agreement, the board shall determine whether the parcel meets the timber stocking standards in effect on the date that the agreement was signed. Notwithstanding the provisions of Article 4 (commencing with Section 51130), if the parcel fails to meet the timber stocking standards, the board or council shall immediately rezone the parcel and specify a new zone for the parcel, which is in conformance with the county general plan and whose primary use is other than timberland.

(4) The parcel shall be timberland, as defined in subdivision (f) of Section 51104.

(5) The parcel shall be in compliance with the compatible use ordinance adopted by the board or council pursuant to Section 51111.

(d) The criteria required by subdivision (c) may also include any or all of the following:

(1) The land area concerned shall be in the ownership of one person, as defined in Section 38106 of the Revenue and Taxation Code, and shall be comprised of single or contiguous parcels of a certain number of acres, not to exceed 80 acres.

(2) The land shall be a certain site quality class or higher under Section 434 of the Revenue and Taxation Code, except that the parcel shall not be required to be of the two highest site quality classes.

SEC. 6. Section 51133 of the Government Code is amended to read:

51133. (a) If application for conversion is required pursuant to Section 4621 of the Public Resources Code, the board or council may tentatively approve the immediate rezoning after notice and hearing and only if by a four-fifths vote of the full body, and all of the following occur:

(1) A public hearing is held with notice of the hearing being given to all owners of lands situated within one mile of the exterior boundary of the land upon which immediate rezoning is proposed.

(2) The board or council makes written findings that immediate rezoning is not inconsistent with the purposes of subdivision (j) of Section 3 of Article XIII of the California Constitution and of this chapter.

(3) The board or council makes written findings that immediate rezoning is in the public interest.

(b) The board or council shall forward its tentative approval to the State Board of Forestry and Fire Protection, together with the application for immediate rezoning, a summary of the public hearing and any other information required by the State Board of Forestry and Fire Protection. The State Board of Forestry and Fire Protection shall consider the tentative approval pursuant to Section 4621.2 of the Public Resources Code. Final approval to an immediate rezoning is given only if the State Board of Forestry and Fire Protection has approved conversion pursuant to Section 4621.2 of the Public Resources Code. Upon final approval of conversion, the State Board of Forestry and Fire Protection shall notify the board or council of the approval, and the board or council shall remove the parcel from the timberland production zone and shall specify a new zone for the parcel.

SEC. 7. Section 61601.25 of the Government Code is amended to read:

61601.25. 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:

(a) 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 State Board of Forestry and Fire Protection.

(b) Acquire, construct, improve, or maintain mail receptacle facilities for mail delivery services to the district and its inhabitants.

SEC. 7.5. Section 61601.25 of the Government Code, as amended by Chapter 56 of the Statutes of 1998, 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 State Board of Forestry and Fire Protection.

(2) Acquire, construct, improve, or maintain mail receptacle facilities for mail delivery services to the district and its inhabitants.

(3) Adopt and enforce by ordinance measures for the abatement, control, and removal of weeds on property within the district.

(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. 8. Section 13132.7 of the Health and Safety Code is amended to read:

13132.7. (a) Within a very high fire hazard severity zone designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code and within a very high hazard severity zone designated by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, every new structure, and every existing structure when 50 percent or more of the total roof area is reroofed within any one-year period, shall have a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(b) In all other areas, every new structure, and every existing structure when 50 percent or more of the total roof area is reroofed within any one-year period, shall have a fire retardant roof covering that is at least class C as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(c) Notwithstanding subdivision (b), within state responsibility areas classified by the State Board of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except for those state responsibility areas designated as moderate fire hazard responsibility zones, every new structure, and every existing structure when 50 percent or more of the total roof area is reroofed within any one-year period, shall have a fire retardant roof covering

that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(d) (1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard severity zones designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, every new structure, and every existing structure when 50 percent or more of the total roof area is reroofed within any one-year period, shall have a fire retardant roof covering that is at least class A as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(2) Paragraph (1) does not apply to any jurisdiction containing a very high fire hazard severity zone if the jurisdiction fulfills both of the following requirements:

(A) Adopts the model ordinance approved by the State Fire Marshal pursuant to Section 51189 of the Government Code or an ordinance that substantially conforms to the model ordinance of the State Fire Marshal.

(B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

(e) The State Building Standards Commission shall incorporate the requirements set forth in subdivisions (a), (b), and (c) by publishing them on January 1, 1995, as an amendment to the California Building Standards Code, commencing with the 1991 edition, in accordance with Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13.

(f) Nothing in this section shall limit the authority of a city, county, city and county, or fire protection district in establishing more restrictive requirements, in accordance with current law, than those specified in this section.

(g) This section shall not affect the validity of an ordinance, adopted prior to the effective date for the relevant roofing standard specified in subdivisions (a) and (b), by a city, county, city and county, or fire protection district, unless the ordinance mandates a standard that is less stringent than the standards set forth in subdivision (a), in which case the ordinance shall not be valid on or after the effective date for the relevant roofing standard specified in subdivisions (a) and (b).

(h) Any qualified historical building or structure as defined in Section 18955 may, on a case-by-case basis, utilize alternative roof constructions as provided by the State Historical Building Code.

(i) The installer of the roof covering shall provide certification of the roof covering classification, as provided by the manufacturer or supplier, to the building owner and, when requested, to the agency responsible for enforcement of this part. The installer shall also install the roof covering in accordance with the manufacturer's listing.

(j) (1) No wood roofing materials shall be sold in this state unless:

(A) On and after January 1, 1997, the materials have passed at least one year of the 10-year natural weathering test.

(B) On and after January 1, 1998, the materials have passed at least two years of the 10-year natural weathering test.

(C) On and after January 1, 1999, the materials have passed at least three years of the 10-year natural weathering test.

(D) On and after January 1, 2000, the materials have passed at least four years of the 10-year natural weathering test.

(E) On and after January 1, 2001, the materials have passed at least five years of the 10-year natural weathering test.

(2) The 10-year natural weathering test required by this subdivision shall be conducted in accordance with standard 15-2 of the 1994 edition of the Uniform Building Code at a testing facility recognized by the State Fire Marshal.

SEC. 9. Section 42311.2 of the Health and Safety Code is amended to read:

42311.2. (a) Notwithstanding Section 42311, a district shall not adopt or impose fees that exceed actual district administrative costs for processing or enforcing permits applicable to any of the following:

(1) Prescribed burning operations on state responsibility lands conducted under the terms of a permit issued by the Department of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4491) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code when the purpose of the operation is prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels.

(2) Burning of vegetation or disposal of slash following timber operations required under regulations adopted by the State Board of Forestry and Fire Protection pursuant to Section 4551.5 or 4562 of the Public Resources Code and for the purpose of reducing the incidence and spread of fires on timberlands.

(3) Wildland vegetation management burns. For purposes of this subdivision, "wildland vegetation management burn" means the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency to burn land predominantly covered with chaparral, trees, grass, or standing brush. For purposes of this subdivision, "prescribed burning" is the planned application of fire to vegetation to achieve any specific objective on lands selected in advance of that application. The planned application of fire may include natural or accidental ignition.

(b) Prior to adopting or revising fees for the activities described in paragraph (1), (2), or (3) of subdivision (a), a district shall hold a public hearing and shall consider the following:

(1) The costs of the fees on private landowners and other persons who engage in activities specified in paragraph (1), (2), or (3) of subdivision (a).

(2) Any revenues currently provided to the county for general government by public agencies which administer public lands.

SEC. 9.5. Section 42311.2 of the Health and Safety Code is amended to read:

42311.2. (a) A district may, subject to the requirements of Section 42311.3, adopt or impose fees that exceed actual district administrative costs for processing or enforcing permits applicable to any of the following:

(1) Prescribed burning operations on state responsibility lands conducted under the terms of a permit issued by the Department of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4491) of Chapter 7 of Part 2 of Division 4 of the Public Resources Code when the purpose of the operation is prevention of high-intensity wildland fires through reduction of the volume and continuity of wildland fuels.

(2) Burning of vegetation or disposal of slash following timber operations required under regulations adopted by the State Board of Forestry and Fire Protection pursuant to Section 4551.5 or 4562 of the Public Resources Code and for the purpose of reducing the incidence and spread of fires on timberlands.

(3) Wildland vegetation management burns. For purposes of this subdivision, "wildland vegetation management burn" means the use of prescribed burning conducted by a public agency, or through a cooperative agreement or contract involving a public agency to burn land predominantly covered with chaparral, trees, grass, or standing brush. For purposes of this subdivision, "prescribed burning" is the planned application of fire to vegetation to achieve any specific objective on lands selected in advance of that application. The planned application of fire may include natural or accidental ignition.

(b) Prior to adopting or revising fees for the activities described in paragraph (1), (2), or (3), a district shall hold a public hearing and shall consider the following:

(1) The costs of the fees on private landowners and other persons who engage in activities specified in paragraph (1), (2), or (3).

(2) Any revenues currently provided to the county for general government by public agencies which administer public lands.

SEC. 10. Section 1547 of the Penal Code is amended to read:

1547. (a) The Governor may offer a reward of not more than fifty thousand dollars ($50,000), payable out of the General Fund, for information leading to the arrest and conviction of any of the following:

(1) Any convict who has escaped from a state prison, prison camp, prison farm, or the custody of any prison officer or employee or as provided in Section 3059 or 4530.

(2) Any person who has committed, or is charged with the commission of, an offense punishable by death.

(3) (A) Any person engaged in the robbery or hijacking of, or any attempt to rob or hijack, any person upon or in charge of, in whole

or in part, any public conveyance engaged at the time in carrying passengers within this state.

(B) As used in this paragraph, "hijacking" means an unauthorized person causing, or attempting to cause, by violence or threat of violence, a public conveyance to go to an unauthorized destination.

(4) Any person who attempts to murder either in the first or second degree, assaults with a deadly weapon, or inflicts serious bodily harm upon a peace officer or firefighter who is acting in the line of duty.

(5) Any person who has committed a crime involving the burning or bombing of public or private property, including any public hospital housed in a privately owned facility.

(6) Any person who has committed a crime involving the burning or bombing of any private hospital. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the hospital, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount offered privately, or fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a private hospital, or any public or private donor on its behalf, from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(7) Any person who commits a violation of Section 11413.

(8) Any person who commits a violation of Section 207.

(9) Any person who has committed a crime involving the burning or bombing of any bookstore or public or private library not subject to Section 11413. A reward may be offered by the Governor in conjunction with such a crime only if a reward in conjunction with the same crime is offered by the bookstore or library, or any other public or private donor on its behalf. The amount of the reward offered by the Governor shall not exceed the aggregate amount offered privately, or fifty thousand dollars ($50,000), whichever is less. Nothing in this paragraph shall preclude a bookstore or public or private library, or any public or private donor on its behalf, from offering a reward in an amount exceeding fifty thousand dollars ($50,000). If a person providing information for a reward under this paragraph so requests, his or her name and address shall remain confidential. This confidentiality, however, shall not preclude or obstruct the investigations of law enforcement authorities.

(10) Any person who commits a violation of Section 454 or 463.

(11) Any person who willfully and maliciously sets fire to, or who attempts to willfully and maliciously set fire to, any property that is included within a hazardous fire area designated by the State Board of Forestry and Fire Protection pursuant to Section 4252 of the Public

Resources Code or by the Director of Forestry and Fire Protection pursuant to Section 4253 of the Public Resources Code, if the fire, or attempt to set a fire, results in death or great bodily injury to anyone, including fire protection personnel, or if the fire causes substantial structural damage.

(12) Any person who has committed, or is charged with the commission of, a felony that is punishable under Section 422.75 and that resulted in serious bodily injury or in property damage of more than ten thousand dollars ($10,000).

(13) Any person who commits an act that violates Section 11411, if the Governor determines that the act is one in a series of similar or related acts committed in violation of that section by the same person or group.

(b) The Governor may offer a reward of not more than one hundred thousand dollars ($100,000) for information leading to the arrest and conviction of any person who kills a peace officer or firefighter who is acting in the line of duty.

(c) The Governor may offer a reward of not more than one hundred thousand dollars ($100,000), payable out of the General Fund, for information leading to the arrest and conviction of any person who commits arson upon a place of worship.

(d) The reward shall be paid to the person giving the information, immediately upon the conviction of the person so arrested.

SEC. 11. Section 700 of the Public Resources Code is amended to read:

700. As used in this chapter:

(a) "Board" means the State Board of Forestry and Fire Protection.

(b) "Department" means the Department of Forestry and Fire Protection.

(c) "Director" means the Director of Forestry and Fire Protection.

SEC. 12. Section 712 of the Public Resources Code is amended to read:

712. Notwithstanding any other provision of this code or of law, and except as provided in the State Building Standards Law, Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, on and after January 1, 1980, the Director of Forestry and Fire Protection, the Department of Forestry and Fire Protection, or the State Board of Forestry and Fire Protection shall not adopt nor publish a building standard as defined in Section 18909 of the Health and Safety Code unless the provisions of Sections 18930, 18933, 18938, 18940, 18943, 18944, and 18945 of the Health and Safety Code are expressly excepted in the statute under which the authority to adopt rules, regulations, or orders is delegated. Any building standard adopted in violation of this section shall have no force or effect. Any building standard adopted before January 1, 1980, pursuant to this code and not expressly excepted by statute from the

provisions of the State Building Standards Law shall remain in effect only until January 1, 1985, or until adopted, amended, or superseded by provisions published in the State Building Standards Code, whichever occurs sooner.

SEC. 13. The heading of Article 2 (commencing with Section 730) of Chapter 2.5 of Division 1 of the Public Resources Code is amended to read:

Article 2. State Board of Forestry and Fire Protection

SEC. 14. Section 730 of the Public Resources Code is amended to read:

730. (a) There is in the department a State Board of Forestry and Fire Protection consisting of nine members appointed by the Governor, subject to confirmation by the Senate.

(b) (1) On and after January 1, 1998, wherever any reference is made in any law to the State Board of Forestry in the department, the reference shall be deemed to be a reference to, and to mean, the State Board of Forestry and Fire Protection.

(2) No existing supplies, forms, signs, or logos shall be destroyed or changed to reflect the name change, and they shall continue to be used until exhausted or unserviceable.

SEC. 15. Section 731.1 of the Public Resources Code is amended to read:

731.1. The Legislature declares that some individuals appointed as members of the State Board of Forestry and Fire Protection are required to be chosen from backgrounds in the forest products and range livestock industries in order to represent and further the interests of those industries and that this representation and furtherance serves the general public interest, as specified in Section 731. Accordingly, the Legislature finds that, for purposes of persons who hold that office, the forest products and the range livestock industries are tantamount to and constitute the public generally within the meaning of Section 87103 of the Government Code in those decisions affecting the forest products or range livestock industries, unless the results of their actions taken as board members have a material financial effect on them distinguishable from their effect on other members of their respective industries generally.

SEC. 16. Section 4002 of the Public Resources Code is amended to read:

4002. "Board" means the State Board of Forestry and Fire Protection.

SEC. 17. Section 4129 of the Public Resources Code is amended to read:

4129. The board of supervisors of any county may provide by ordinance that the county elects to assume responsibility for the prevention and suppression of all fires on all land in the county, including lands within state responsibility areas when the Director

of Forestry and Fire Protection concurs in accordance with criteria adopted by the State Board of Forestry and Fire Protection, but not including lands owned or controlled by the federal government or any agency of the federal government or lands within the exterior boundaries of any city. After the effective date of the contract referred to in Section 4133, the county shall exercise for the duration of the contract all the duty, power, authority, and responsibility for the prevention and suppression of all fires on all land in the county for which the county is authorized by this section to elect to assume responsibility.

SEC. 18. Section 4521.3 of the Public Resources Code is amended to read:

4521.3. "Board" means the State Board of Forestry and Fire Protection.

SEC. 19. Section 4604 of the Public Resources Code is amended to read:

4604. (a) The department shall provide an initial inspection of the area in which timber operations are to be conducted within 10 days from the date of filing of the timber harvesting plan or nonindustrial timber management plan, or a longer period as may be mutually agreed upon by the department and the person submitting the plan, except that the inspection need not be made pursuant to the filing of a timber harvesting plan if the department determines that the inspection would not add substantive information that is necessary to enforce this chapter. The department shall provide for inspections, as needed, as follows:

(1) During the period of commencement of timber operations.

(2) When timber operations are well under way.

(3) Following completion of timber operations.

(4) At any other times as determined to be necessary to enforce this chapter.

(b) (1) The Department of Fish and Game, the California regional water quality control boards, or the State Water Resources Control Board, if accompanied by Department of Forestry and Fire Protection personnel and after 24-hour advance notification is given to the landowner, may enter and inspect land during normal business hours at any time after commencement of timber harvest plan activities on the land and before the director issues a report of satisfactory completion of stocking pursuant to Section 4588 or at any time before the end of the first winter period following the filing of a work completion report pursuant to Section 4585, whichever is later. Any member of the inspection party may utilize whatever measurement and evaluation devices, including, but not limited to, photographic equipment and temperature measurement devices, that are determined to be necessary, when participating in an inspection of an area pursuant to subdivision (a) or after commencement of timber harvesting plan activities pursuant to this subdivision.

(2) Photographs taken during inspections shall be clearly labeled as to time, date, and location and shall be the property of the department and part of the inspection record. The inspection record shall be subject to all provisions of the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(3) This subdivision is not a limitation upon the authority of any agency to inspect pursuant to any other provision of law.

(c) This section shall become operative on January 1, 1991, or on the effective date of the rules and regulations adopted by the State Board of Forestry and Fire Protection pursuant to Senate Bill 1566, whichever date occurs first.

SEC. 20. Section 4662 of the Public Resources Code is amended to read:

4662. The department is responsible for the establishment and development of the Soquel Demonstration State Forest and for ongoing maintenance and operations. The director shall appoint an advisory committee to assist the department in planning future management of the forest. The advisory committee shall include representatives of the Santa Cruz County Board of Supervisors, the Department of Parks and Recreation, the State Board of Forestry and Fire Protection, the Forest of Nisene Marks Advisory Committee, and the Department of Fish and Game.

SEC. 21. Section 4789.2 of the Public Resources Code is amended to read:

4789.2. As used in this chapter:

(a) "Board" means the State Board of Forestry and Fire Protection.

(b) "Resources Planning Act" means the Forest and Rangelands Renewable Resources Planning Act of 1974 (16 U.S.C. Secs. 1601 to 1610, incl.).

(c) "Assessment" means the forest resource assessment and analysis developed pursuant to Section 4789.3.

(d) "Director" means the Director of Forestry and Fire Protection.

(e) "Forest and rangeland resources" means those uses and values associated with, attainable from, or closely tied to, forest and rangelands, including fish, range, recreation, timber, watershed, wilderness, and wildlife.

(f) "Forest land" means timberland defined pursuant to subdivision (g), and other lands that have been withdrawn from timber production, such as units of the state park system, national parks, and wilderness areas.

(g) "Timberland" means land on which is growing a significant stand of trees of commercial species, or potential commercial species, either in public or private ownership or that is generally capable of maintaining a stand of trees in perpetuity and not withdrawn or otherwise devoted to uses other than timber production.

(h) "Timber" means wood fiber of commercial or potential commercial species growing on timberland as defined in subdivision (g).

(i) "Rangeland" means land on which the existing vegetation, whether growing naturally or through management, is suitable for grazing or browsing of domestic livestock for at least a portion of the year. Rangeland includes any natural grasslands, savannas, shrublands (including chaparral), deserts, wetlands, and woodlands (including Eastside ponderosa pine, pinyon, juniper, and oak) which support a vegetative cover of native grasses, grasslike plants, forbs, shrubs, or naturalized species.

SEC. 22. Section 5093.52 of the Public Resources Code is amended to read:

5093.52. As used in this chapter, the following terms have the following meaning:

(a) "Secretary" means the Secretary of the Resources Agency.

(b) "Resources Agency" means the Secretary of the Resources Agency and any constituent units of the Resources Agency that the secretary determines to be necessary to accomplish the purposes of this chapter.

(c) "River" means the water, bed, and shoreline of rivers, streams, channels, lakes, bays, estuaries, marshes, wetlands and lagoons, up to the first line of permanently established riparian vegetation.

(d) "Free-flowing" means existing or flowing without artificial impoundment, diversion, or other modification of the river. The presence of low dams, diversion works, and other minor structures shall not automatically bar any river's inclusion within the system; provided, however, that this subdivision shall not be construed to authorize or encourage future construction of those structures on any component of the system.

(e) "System" means the California Wild and Scenic Rivers System.

(f) "Land use regulation" means the regulation by any state or local governmental entity, agency, or official of any activities that take place other than directly on the waters of the segments of the rivers designated in Section 5093.54.

(g) "Director" means the Director of Fish and Game.

(h) "Immediate environments" means the land immediately adjacent to the segments of the rivers designated in Section 5093.54.

(i) "Special treatment areas" means, for purposes of this chapter, those areas defined as special treatment areas in Section 895.1 of Title 14 of the California Administrative Code, as in effect on January 1, 1981, as that definition is applicable to wild and scenic river segments designated from time to time in Section 5093.54.

(j) "Board" means the State Board of Forestry and Fire Protection.

SEC. 23. Section 5093.68 of the Public Resources Code is amended to read:

5093.68. (a) Within the boundaries of special treatment areas, all of the following provisions shall apply, in addition to any other provision, whether by statute or regulation:

(1) A timber operator, whether licensed or not, is responsible for the actions of his or her employees. The registered professional forester who prepares and signs a timber harvesting plan, a timber management plan, or a notice of timber operations is responsible for its contents, but is not be responsible for the implementation or execution of the plan or notice unless employed for that purpose.

(2) Any registered professional forester preparing a timber harvesting plan shall certify that he or she or a qualified representative has personally inspected the plan area on the ground.

(3) Any person operating within the special treatment area who willfully violates any provision of Chapter 8 (commencing with Section 4511) of Part 2 of Division 4, or any rule or regulation of the State Board of Forestry and Fire Protection adopted pursuant thereto, that results in significant environmental damage shall be guilty of a misdemeanor punishable by a fine of not less than five hundred dollars ($500) or more than five thousand dollars ($5,000), or by imprisonment for not more than one year in the county jail, or both. The person shall also be subject to civil damages to the state not to exceed ten thousand dollars ($10,000) for each misdemeanor violation.

(4) The Director of Forestry and Fire Protection may require a bond or other evidence of financial responsibility from any timber operator whose ability to pay the civil damages provided for in this section is reasonably determined to be uncertain.

(b) In order to temporarily suspend timber operations that are being conducted within special treatment areas adjacent to wild and scenic rivers designated pursuant to Section 5093.54, while judicial remedies are pursued pursuant to this section, an inspecting forest officer of the Department of Forestry and Fire Protection may issue a written timber operations stop order if, upon reasonable cause, the officer determines that a timber operation is being conducted, or is about to be conducted, in violation of Chapter 8 (commencing with Section 4511) of Part 2 of Division 4, or of rules and regulations adopted pursuant to those provisions, and that the violation or threatened violation would result in imminent and substantial damage to soil, water, or timber resources or to fish and wildlife habitat. A stop order shall apply only to those acts or omissions that are the proximate cause of the violation or that are reasonably foreseen would be the proximate cause of a violation. The stop order shall be effective immediately and throughout the next day.

(c) A supervising forest officer may, after an onsite investigation, extend a stop order issued pursuant to subdivision (b) for up to five days, excluding Saturday and Sunday, provided that the forest officer finds that the original stop order was issued upon reasonable cause.

A stop order shall not be issued or extended for the same act or omission more than one time.

(d) Each stop order shall identify the specific act or omission that constitutes a violation or that, if foreseen, would constitute a violation, the specific timber operation that is to be stopped, and any corrective or mitigative actions that may be required.

(e) The Department of Forestry and Fire Protection may terminate the stop order if the timber operator enters into a written agreement with the department assuring that the timber operator will resume operations in compliance with the provisions of Chapter 8 (commencing with Section 4511) of Part 2 of Division 4, and with the rules and regulations adopted pursuant to those provisions, and will correct any violation. The department may require a reasonable cash deposit or bond payable to the department as a condition of compliance with the agreement.

(f) Notice of the issuance of a stop order or an extension of a stop order shall be deemed to have been made to all persons working on the timber operation when a copy of the written order is delivered to the person in charge of operations at the time that the order is issued or, if no persons are present at that time, by posting a copy of the order conspicuously on the yarder or log loading equipment at a currently active landing on the timber operations site. If no person is present at the site when the order is issued, the issuing forest officer shall deliver a copy of the order to the timber operator either in person or to the operator's address of record prior to the commencement of the next working day.

(g) As used in this section, "forest officer" means a registered professional forester employed by the Department of Forestry and Fire Protection in a civil service classification of forester II or higher grade.

(h) (1) Failure of the timber operator or an employee of the timber operator, after receiving notice pursuant to this section, to comply with a validly issued stop order is a violation of this section and is punishable as provided in paragraph (3) of subdivision (a). However, in all cases, the timber operator, and not an employee of the operator or any other person, shall be charged with that violation. Each day or portion thereof that the violation continues shall constitute a new and separate offense.

(2) In determining the penalty for any timber operator guilty of violating a validly issued stop order, the court shall take into consideration all relevant circumstances, including, but not limited to, the following:

(A) The extent of harm to soil, water, or timber resources or to fish and wildlife habitat.

(B) Corrective action, if any, taken by the defendant.

(i) Nothing in this section shall prevent a timber operator from seeking an alternative writ as prescribed in Chapter 2 (commencing

with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, or as provided by any other provision of law.

(j) (1) If a timber operator believes that a forest officer lacked reasonable cause to issue or extend a stop order pursuant to this section, the timber operator may present a claim to the State Board of Control pursuant to Part 3 (commencing with Section 900) of Division 3.6 of Title 1 of the Government Code for compensation and damages resulting from the stopping of timber operations.

(2) If the State Board of Control finds that the forest officer lacked reasonable cause to issue or extend the stop order, the board shall award a sum of not less than one hundred dollars ($100), nor more than one thousand dollars ($1,000), per day for each day the order was in effect.

SEC. 24. Section 30404 of the Public Resources Code is amended to read:

30404. (a) The commission shall periodically, in the case of the State Energy Resources Conservation and Development Commission, the State Board of Forestry and Fire Protection, the State Water Resources Control Board and the California regional water quality control boards, the State Air Resources Board and air pollution control districts and air quality management districts, the Department of Fish and Game, the Department of Parks and Recreation, the Department of Boating and Waterways, the Division of Mines and Geology and the Division of Oil, Gas, and Geothermal Resources in the Department of Conservation, and the State Lands Commission, and may, with respect to any other state agency, submit recommendations designed to encourage the state agency to carry out its functions in a manner consistent with this division. The recommendations may include proposed changes in administrative regulations, rules, and statutes.

(b) Each of those state agencies shall review and consider the commission recommendations and shall, within six months from the date of their receipt, to the extent that the recommendations have not been implemented, report to the Governor and the Legislature its action and reasons therefor. The report shall also include the state agency's comments on any legislation that may have been proposed by the commission.

SEC. 25. Section 30417 of the Public Resources Code is amended to read:

30417. (a) In addition to the provisions set forth in Section 4551.5, this section shall apply to the State Board of Forestry and Fire Protection.

(b) Within 180 days after January 1, 1977, the commission shall identify special treatment areas within the coastal zone to ensure that natural and scenic resources are adequately protected. The commission shall forward to the State Board of Forestry and Fire Protection maps of the designated special treatment areas together with specific reasons for those designations and with

recommendations designed to assist the State Board of Forestry and Fire Protection in adopting rules and regulations that adequately protect the natural and scenic qualities of the special treatment areas.

SEC. 26. Section 431 of the Revenue and Taxation Code is amended to read:

431. For purposes of this article, the following terms have the following meaning:

(a) "Timber" means trees of any species maintained for eventual harvest for forest products purposes, whether planted or of natural growth, standing or down, on privately or publicly owned lands, including Christmas trees, but does not mean nursery stock.

(b) "Timberland" means land zoned pursuant to Chapter 6.7 (commencing with Section 51100) of Part 1 of Division 1 of Title 5 of the Government Code.

(c) "Timber Advisory Committee" means a standing committee appointed by the board composed of one representative of the Board of Equalization, one representative of the State Board of Forestry and Fire Protection, five assessors from the rate adjustment counties defined in Section 38105, and one member representing small-scale timber owners, and one member representing large-scale timber owners.

SEC. 27. Section 434 of the Revenue and Taxation Code is amended to read:

434. On or before September 1, 1976, the board, after consultation with the Timber Advisory Committee, shall prepare instructions setting forth temporary criteria and procedures for grading timberland on the basis of its site quality and operability. Five general site quality classes shall be established. These classes shall be the same as those adopted by the State Board of Forestry and Fire Protection pursuant to subdivision (d) of Section 4528 of, and Section 4551 of, the Public Resources Code. Within each of the five site quality classes, appropriate classes of operability shall be established, based on factors, such as accessibility, topography, and legislative or administrative restraints. On or before December 31, 1979, these classes shall be designated as operative or inoperative. Commencing with January 1, 1980, the board shall determine appropriate designations of operability. On or before March 1, 1977, each assessor shall grade all timberland within the county on the basis of these instructions. The assessor's grading is subject to the appeals procedure established by law for other assessments, as provided in Chapter 4 (commencing with Section 721) of Part 2 and Chapter 1 (commencing with Section 1601) of Part 3.

SEC. 28. Section 7.5 of this bill incorporates amendments to Section 61601.25 of the Government Code proposed by both this bill and SB 1649. 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 61601.25 of the Government Code, and (3) this

bill is enacted after SB 1649, in which case Section 7 of this bill shall not become operative.

SEC. 29. Section 9.5 of this bill incorporates amendments to Section 42311.2 of the Health and Safety Code proposed by both this bill and AB 1740. 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 42311.2 of the Health and Safety Code, and (3) this bill is enacted after AB 1740, in which case Section 9 of this bill shall not become operative.

CHAPTER 973

An act to amend Sections 69904, 69905, 70044.5, 72608, 72627.5, 72762, 72776, 73348, 73349, 73351, 73353.2, 73354, 73355, 73356, 73363, 73365, 73366, 73399, 73523, 73524, 73525, 73528, 73529, 73565, 73566, 73567, 73568, 73604, 73649.1, 73681.1, 73682, 73684, 73691, 73692, 73695, 73699, 73736, 73759, 73772, 73773, 73794, 73798, 73822, 73823, 73954, 73960, 74000, 74001, 74001.5, 74002, 74004, 74005, 74344, 74345, 74346, 74355, 74368, 74370, 74603, 74604, 74607, 74610, 74642, 74643, 74663, 74665, 74743, 74745, 74749, 74765, 74905, 74907, 74909, 74910, 74911, 74912, 74913, 74921.11, and 74926.7 of, to amend, repeal, and add Section 72609 of, to add Sections 69894, 73586.1, 73785, 73957.5, 74727.5, and 74745.1 to, to add Article 1.5 (commencing with Section 73330) to Chapter 10 of Title 8 of, to repeal Sections 73364, 73665.5, 73665.6, 73775, 73778, 73778.5, 73780, 73795, 73799, 74006, 74356, 74357, 74358, 74359, 74921.9, 74922.5, and 74926.6 of, to repeal and add Sections 69894.1, 69899.5, 73353, 73358, 73644, 73665, 73666, 73683, 73699.1, 73957, 73959, 74921.5, 74921.6, 74921.7, 74921.8, and 74921.10 of, the Government Code, relating to courts.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 69894 is added to the Government Code, to read:

69894. In the County of Los Angeles, a majority of the judges of the superior court may appoint the following officers and employees:

Number	Title
6	Accountant, SC
1	Accounting Officer II, SC
6	Accounting Technician
2	Administrative Assistant I

4	Administrative Assistant II
3	Administrative Assistant III
19	Administrative Judicial Secretary
12	Administrative Secretary
3	Administrator I, SC
3	Administrator II, SC
2	Administrator III, SC
1	Arbitration/Judicial Assignment Administrator, SC
38	Assistant Division/District Chief, SC
1	Assistant Head, Office Services
1	Chief Clerk
1	Chief, Office and Special Support Services, SC
23	Child Custody Evaluator
2	Computer Equipment Operator, SC
66	Court Commissioner
22	Court Exhibits Custodian
3	Court Facilities and Property Services Coordinator
351	Court Reporter
12	Court Services Administrator I, SC
3	Court Services Administrator II, SC
59	Court Services Liaison, SC
10	Courtroom Assistant, SC
1	Criminal Courts Coordinator
19	Data Conversion Equipment Operator
1	Data Conversion Supervisor I, SC
1	Data Processing Contracts Administrator, SC
3	Data Processing Manager, SC
3	Deputy Executive Officer, SC
1	Director, Capital Projects/Facilities Management, SC
3	Director, SC
16	District Jury Coordinator
5	Division Chief, Family Court Services, SC
1	Division Chief, Mental Health Services, SC
14	EDP Programmer Analyst I, SC
7	EDP Programmer Analyst II, SC
13	EDP Senior Programmer Analyst, SC
18	EDP Supervising Programmer Analyst, SC

36	Electronic Recording Monitor
1	Executive Officer/Clerk of the Superior Court
1	Family Law Attorney, SC
1	Family Law Facilitator, SC
1	Finance Officer, Mandatory Expense, SC
8	Financial Evaluator, SC
1	Graphic Artist, SC
2	Head, Staffing Services
1	Intermediate Accountant, SC
3	Interpreter/Court Reporter Assignment Clerk
10	Investigator
297	Judicial Assistant
16	Judicial Assistant Trainee
2	Judicial Secretary
25	Juvenile Traffic Hearing Officer
106	Law Clerk
1	Law Librarian, SC
1	Legal Research Assistant
1	Light Vehicle Driver
1	Manager I, SC
12	Manager II, SC
4	Manager III, SC
11	Mental Health Hearing Referee
393	Office Assistant I
165	Office Assistant II
395	Office Assistant III
38	Office Assistant IV
4	Office Assistant Trainee
3	Office Systems Technician I, SC
3	Office Systems Technician II, SC
19	Paralegal, SC
7	Payroll Technician, SC
4	Personnel Assistant
4	Personnel Technician
1	Principal Counselor
7	Principal Program Analyst
2	Printer I, SC
1	Printer II, SC
1	Printing Production Supervisor, SC
12	Probate Attorney I, SC

1	Probate Attorney II, SC
11	Probate Decree Clerk
1	Procurement Assistant
5	Procurement Assistant II, SC
11	Program Analyst
15	Program Specialist
9	Property Custodian Auditor
1	Public Information Officer, SC
6	Records Assistant
38	Referee
1	Research Attorney
6	Secretary I
37	Secretary II
2	Secretary to the Deputy Executive Officer, SC
1	Secretary to Grand Jury
2	Secretary to Presiding Judge
1	Secretary to the Assistant Presiding Judge, SC
1	Secretary to the Executive Officer/Clerk of the Superior Court
1	Senior Accountant, SC
2	Senior Administrative Secretary, SC
12	Senior Counselor
4	Senior Court Services Liaison, SC
6	Senior Departmental Personnel Technician
10	Senior Electronic Recording Monitor, SC
1	Senior Employee Relations Representative, SC
44	Senior Family Mediator
53	Senior Judicial Assistant, SC
16	Senior Judicial Secretary
30	Senior Office Assistant I
9	Senior Office Assistant II
8	Senior Personnel Assistant
6	Senior Program Analyst
3	Senior Property Custodian–Auditor
2	Senior Word Processor
1	Special Assistant
1	Special Assistant, Appellate Department, SC
18	Staff Assistant II
2	Stenographic Clerk, Family Law Court
50	Student Professional Worker, SC

30	Student Worker, SC
113	Superior Court Clerk
1	Supervising Computer Operator, SC
3	Supervising Court Exhibits Custodian I
1	Supervising Court Exhibits Custodian II
11	Supervising District Office Clerk
2	Supervising Law Clerk
1	Supervising Paralegal, SC
1	Supervising Probate Attorney, SC
1	Supervising Probate Decree Clerk
1	Supervisor, Computer Support Services, SC
2	Supervisor, Records Section, SC
1	Training Officer, SC
5	Warehouse Worker I, SC
1	Warehouse Worker II, SC
5	Warehouse Worker Aide, M.C., NCS

All personnel appointed pursuant to this article shall serve at the pleasure of the court and may at any time be removed by the court in its discretion.

SEC. 1.2. Section 69894.1 of the Government Code is repealed.

SEC. 1.3. Section 69894.1 is added to the Government Code, to read:

69894.1. (a) Officers and employees of the superior court shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Schedule
Accountant, SC	71H
Accounting Officer II, SC	78D
Accounting Technician	56K
Administrative Assistant I	60H N2
Administrative Assistant II	70E
Administrative Assistant III	74A
Administrative Judicial Secretary	73D N3
Administrative Secretary	72D
Administrator I, SC	R11 N23
Administrator II, SC	R12 N23
Administrator III, SC	R13 N23
Arbitration/Judicial Assignment Administrator, SC	85D
Assistant Director, Management Systems, SC	R10 N23
Assistant Division/District Chief, SC	83D
Assistant Head, Office Services	68B

Chief Attorney, Planning and Research, SC	98J NW
Chief Clerk	69L
Chief, Management Studies, SC	90F
Chief, Office and Special Support Services, SC	79D
Child Custody Evaluator	84J
Computer Equipment Operator, SC	54L
Computer Systems Operator, SC	61D
Court Commissioner	F $7,606.79
Court Exhibits Custodian	61K
Court Facilities and Property Services Coordinator	75E
Court Reporter	84H NZ
Court Services Administrator I, SC	R9 N23
Court Services Administrator II, SC	R10 N23
Court Services Liaison, SC	60C
Courtroom Assistant, SC	62C
Criminal Courts Coordinator	R10 N23
Data Conversion Equipment Operator	57B
Data Conversion Supervisor I, SC	61A
Data Processing Contracts Administer, SC	83L
Data Processing Manager, SC	89B
Deputy Executive Officer, SC	R15 N23
Director, Capitol Projects/Facilities Management, SC	R12 N23
Director, SC	R14 N23
District Jury Coordinator	59G
Division Chief, Family Court Services, SC	R9 N23
Division Chief, Mental Health Services, SC	R9 N23
EDP Programmer Analyst I, SC	75F N2
EDP Programmer Analyst II, SC	77F N2
EDP Senior Programmer Analyst, SC	82E
EDP Supervising Programmer Analyst, SC	85J
Electronic Recording Monitor	60C
Employee Relations Representative, SC	83D
Executive Officer/Clerk of the Superior Court	R18 N23
Family Law Attorney, SC	88L NX
Family Law Facilitator, SC	90L NX
Finance Officer, Mandatory Expense, SC	87C
Financial Evaluator, SC	61B
Graphic Artist, SC	65J
Head, Staffing Services	82F
Intermediate Accountant, SC	77L
Interpreter	58L

Interpreter/Court Reporter Assignment Clerk	71G
Investigator	74H NX
Judicial Administration Specialist, SC	78E N3
Judicial Assistant	70H NX
Judicial Assistant Trainee	F $2,505.00
Judicial Secretary	66D N3
Jury Program Coordinator	78F
Juvenile Traffic Hearing Officer	85B
Law Clerk	76E
Law Librarian, SC	78F
Legal Research Assistant	59K
Light Vehicle Driver	48J
Manager I, SC	R9 N23
Manager II, SC	R10 N23
Manager III, SC	R11 N23
Mental Health Hearing Referee	84J
Office Assistant I	51G
Office Assistant II	55G
Office Assistant III	57G
Office Assistant IV	59G
Office Assistant Trainee	47G
Office Systems Technician I, SC	67L
Office Systems Technician II, SC	74L
Paralegal, SC	67B NW
Payroll Records Supervisor	67A
Payroll Technician, SC	62A
Personnel Assistant	57L
Personnel Technician	74F
Principal Counselor	83G
Principal Program Analyst	84F
Printer I, SC	57E
Printer II, SC	62C N2
Printing Production Supervisor, SC	70G
Probate Attorney I, SC	97J
Probate Attorney II, SC	99G
Probate Decree Clerk	58B
Procurement Assistant	58H
Procurement Assistant II, SC	64G
Program Analyst	74F
Program Specialist	68K
Property Custodian Auditor	57G
Public Information Officer, SC	R10 N23

Records Assistant	57K
Referee	FD $349.74
Research Attorney	92J NW
Secretary I	61B
Secretary II	68D
Secretary to Deputy Executive Officer, SC	76D
Secretary to Grand Jury	76C
Secretary to Presiding Judge	84D
Secretary to the Assistant Presiding Judge, SC	78D
Secretary to the Executive Officer/Clerk of the Superior Court	82D
Senior Accountant, SC	83L
Senior Administrative Secretary, SC	74D
Senior Counselor	80G
Senior Court Services Liaison, SC	67A
Senior Departmental Personnel Technician	78F
Senior Electronic Recording Monitor, SC	67A
Senior Employee Relations Representative, SC	89E
Senior Family Mediator	84J
Senior Judicial Assistant, SC	79E
Senior Judicial Secretary	69D N3
Senior Office Assistant I	61G
Senior Office Assistant II	65D
Senior Personnel Assistant	67H
Senior Probate Decree Clerk	64A
Senior Program Analyst	78F
Senior Property Custodian–Auditor	63F
Senior Word Processor	60B
Special Assistant	R8 N23
Special Assistant, Appellate Department, SC	79D
Staff Assistant I	61G
Staff Assistant II	68G
Staff Attorney, Planning and Research, SC	89J NW
Stenographic Clerk, Family Law Court	70B
Student Professional Worker, SC	FH $8.47
Student Worker, SC	FH $7.00
Superior Court Clerk	70H NX
Supervising Computer Operator, SC	67L
Supervising Court Exhibits Custodian I	64J
Supervising Court Exhibits Custodian II	71A
Supervising District Office Clerk	68H
Supervising Law Clerk	78E

Supervising Paralegal, SC	73B NX
Supervising Probate Attorney, SC	100K
Supervising Probate Decree Clerk	74K
Supervisor, Computer Support Services, SC	73C
Supervisor, Records Section, SC	67L
Training Officer, SC	82F
Warehouse Worker I, SC	56H
Warehouse Worker II, SC	60H
Warehouse Worker Aide, M.C., NCS	54H

Whenever a reference to numbered salary schedules and notes is made in this section, those found in the Los Angeles County Code, Title 6, shall apply. Whenever the compensation of superior court judges is adjusted, the flat rate salaries for court commissioners and referees shall be adjusted to maintain the salary relationship of 85 percent of the annual compensation of superior court judges.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F—Flat rate per month

FD—Flat rate per day

FH—Flat rate per hour

As defined in the Los Angeles County Code Section 6.28.040, the following abbreviation is used in conjunction with or instead of schedule or range numbers:

N—Note (refers to Notes at end of Section 6.28.050)

"R" or "A" indicates a position's inclusion in the County's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the county code.

(b) This section shall become operative on January 1, 1999, and shall remain in effect only until July 1, 1999, and as of that date is repealed.

SEC. 1.4. Section 69894.1 is added to the Government Code, to read:

69894.1. (a) Officers and employees of the superior court shall receive a monthly salary at a rate specified in the Los Angeles County Code, as follows:

Title	Schedule
Accountant, SC	72E
Accounting Officer II, SC	79A
Accounting Technician	57G
Administrative Assistant I	61E N2
Administrative Assistant II	71B

Administrative Assistant III	74J
Administrative Judicial Secretary	74A N3
Administrative Secretary	73A
Administrator I, SC	R11 N23
Administrator II, SC	R12 N23
Administrator III, SC	R13 N23
Arbitration/Judicial Assignment Administrator, SC	86A
Assistant Director, Management Systems, SC	R10 N23
Assistant Division/District Chief, SC	84A
Assistant Head, Office Services	68K
Chief Attorney, Planning and Research, SC	99F NW
Chief Clerk	70H
Chief, Management Studies, SC	91C
Chief, Office and Special Support Services, SC	80A
Child Custody Evaluator	85F
Computer Equipment Operator, SC	55H
Computer System Operator, SC	62A
Court Commissioner	F $7,606.79
Court Exhibits Custodian	62G
Court Facilities and Property Services Coordinator	76B
Court Reporter	85E NZ
Court Services Administrator I, SC	R9 N23
Court Services Administrater II, SC	R10 N23
Court Services Liaison, SC	60L
Courtroom Assistant, SC	62L
Criminal Courts Coordinator	R10 N23
Data Conversion Equipment Operator	57K
Data Conversion Supervisor I, SC	61J
Data Processing Contracts Administrator, SC	84H
Data Processing Manager, SC	89K
Deputy Executive Officer, SC	R15 N23
Director, Capital Projects/Facilities Management, SC	R12 N23
Director, SC	R14 N23
District Jury Coordinator	60D
Division Chief, Family Court Services, SC	R9 N23
Division Chief, Mental Health Services, SC	R9 N23
EDP Programmer Analyst I, SC	76C N2
EDP Programmer Analyst II, SC	78C N2
EDP Senior Programmer Analyst, SC	83B

EDP Supervising Programmer Analyst, SC	86F
Electronic Recording Monitor	60L
Employee Relations Representative, SC	84A
Executive Officer/Clerk of the Superior Court	R18 N23
Family Law Attorney, SC	89H NX
Family Law Facilitator, SC	91H NX
Finance Officer, Mandatory Expense, SC	87L
Financial Evaluator, SC	61K
Graphic Artist, SC	66F
Head, Staffing Services	83C
Intermediate Accountant, SC	78H
Interpreter	59H
Interpreter/Court Reporter Assignment Clerk	72D
Investigator	75E NX
Judicial Administration Specialist, SC	79B N3
Judicial Assistant	71E NX
Judicial Assistant Trainee	F $2,505.00
Judicial Secretary	67A N3
Jury Program Coordinator	79C
Juvenile Traffic Hearing Officer	85K
Law Clerk	77B
Law Librarian, SC	79C
Legal Research Assistant	60G
Light Vehicle Driver	49F
Manager I, SC	R9 N23
Manager II, SC	R10 N23
Manager III, SC	R11 N23
Mental Health Hearing Referee	85F
Office Assistant I	52D
Office Assistant II	56D
Office Assistant III	58D
Office Assistant IV	60D
Office Assistant Trainee	48D
Office Systems Technician I, SC	68H
Office Systems Technician II, SC	75H
Paralegal, SC	67K NW
Payroll Records Supervisor	67J
Payroll Technician, SC	62J
Personnel Assistant	58H
Personnel Technician	75C

Principal Counselor	84D
Principal Program Analyst	85C
Printer I, SC	58B
Printer II, SC	62L N2
Printing Production Supervisor, SC	71D
Probate Attorney I, SC	98F
Probate Attorney II, SC	100D
Probate Decree Clerk	58K
Procurement Assistant	59E
Procurement Assistant II, SC	65D
Program Analyst	75C
Program Specialist	69G
Property Custodian Auditor	58D
Public Information Officer, SC	R10 N23
Records Assistant	58G
Referee	FD $349.74
Research Attorney	93F NW
Secretary I	61K
Secretary II	69A
Secretary to Deputy Executive Officer, SC	77A
Secretary to Grand Jury	76L
Secretary to Presiding Judge	85A
Secretary to the Assistant Presiding Judge, SC	79A
Secretary to the Executive Officer/Clerk of the Superior Court	83A
Senior Accountant, SC	84H
Senior Administrative Secretary, SC	75A
Senior Counselor	81D
Senior Court Services Liaison, SC	67J
Senior Departmental Personnel Technician	79C
Senior Electronic Recording Monitor, SC	67J
Senior Employee Relations Representative, SC	90B
Senior Family Mediator	85F
Senior Judicial Assistant, SC	80B
Senior Judicial Secretary	70A N3
Senior Office Assistant I	62D
Senior Office Assistant II	66A
Senior Personnel Assistant	68E
Senior Probate Decree Clerk	64J
Senior Program Analyst	79C

Senior Property Custodian–Auditor	64C
Senior Word Processor	60K
Special Assistant	R8 N23
Special Assistant, Appellate Department, SC	80A
Staff Assistant I	62D
Staff Assistant II	69D
Staff Attorney, Planning and Research, SC	90F NW
Stenographic Clerk, Family Law Court	70K
Student Professional Worker, SC	FH $8.64
Student Worker, SC	FH $7.14
Superior Court Clerk	71E NX
Supervising Computer Operator, SC	68H
Supervising Court Exhibits Custodian I	65F
Supervising Court Exhibits Custodian II	71J
Supervising District Office Clerk	69E
Supervising Law Clerk	79B
Supervising Paralegal, SC	73K NX
Supervising Probate Attorney, SC	101G
Supervising Probate Decree Clerk	75G
Supervisor, Computer Support Services, SC	73L
Supervisor, Records Section, SC	68H
Training Officer, SC	83C
Warehouse Worker I, SC	57E
Warehouse Worker II, SC	61E
Warehouse Worker Aide, M.C., NCS	55E

Whenever a reference to numbered salary schedules and notes is made in this section, those found in the Los Angeles County Code, Title 6, shall apply. Whenever the compensation of superior court judges is adjusted, the flat rate salaries for court commissioners and referees shall be adjusted to maintain the salary relationship of 85 percent of the annual compensation of superior court judges.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F—Flat rate per month

FD—Flat rate per day

FH—Flat rate per hour

As defined in the Los Angeles County Code Section 6.28.040, the following abbreviation is used in conjunction with or instead of schedule or range numbers:

N—Note (refers to Notes at end of Section 6.28.050)

"R" or "A" indicates a position's inclusion in the County's Management Appraisal and Performance Plan. The grade number

following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the county code.

(b) This section shall become operative on July 1, 1999, and shall remain in effect only until January 1, 2000, and as of that date is repealed.

SEC. 1.5. Section 69894.1 is added to the Government Code, to read:

69894.1. (a) Officers and employees of the superior court shall receive a monthly salary at a rate specified in the Los Angeles County Code, as follows:

Title	Schedule
Accountant, SC	73B
Accounting Officer II, SC	79J
Accounting Technician	58D
Administrative Assistant I	62B N2
Administrative Assistant II	71K
Administrative Assistant III	75F
Administrative Judicial Secretary	74J N3
Administrative Secretary	73J
Administrator I, SC	R11 N23
Administrator II, SC	R12 N23
Administrator III, SC	R13 N23
Arbitration/Judicial Assignment Administrator, SC	86J
Assistant Director, Management Systems, SC	R10 N23
Assistant Division/District Chief, SC	84J
Assistant Head, Office Services	69G
Chief Attorney, Planning and Research, SC	100C NW
Chief Clerk	71E
Chief, Management Studies, SC	91L
Chief, Office and Special Support Services, SC	80J
Child Custody Evaluator	86C
Computer Equipment Operator, SC	56E
Computer System Operator, SC	62J
Court Commissioner	F $7,606.79
Court Exhibits Custodian	63D
Court Facilities and Property Services Coordinator	76K
Court Reporter	86B NZ
Court Services Administrator I, SC	R9 N23
Court Services Administrator II, SC	R10 N23
Court Services Liaison, SC	61H

Courtroom Assistant, SC	63H
Criminal Courts Coordinator	R10 N23
Data Conversion Equipment Operator	58G
Data Conversion Supervisor I, SC	62F
Data Processing Contracts Administrator, SC	85E
Data Processing Manager, SC	90G
Deputy Executive Officer, SC	R15 N23
Director, Capital Projects/Facilities Management, SC	R12 N23
Director, SC	R14 N23
District Jury Coordinator	61A
Division Chief, Family Court Services, SC	R9 N23
Division Chief, Mental Health Services, SC	R9 N23
EDP Programmer Analyst I, SC	76L N2
EDP Programmer Analyst II, SC	78L N2
EDP Senior Programmer Analyst, SC	83K
EDP Supervising Programmer Analyst, SC	87C
Electronic Recording Monitor	61H
Employee Relations Representative, SC	84J
Executive Officer/Clerk of the Superior Court	R18 N23
Family Law Attorney, SC	90E NX
Family Law Facilitator, SC	92E NX
Finance Officer, Mandatory Expense, SC	88H
Financial Evaluator, SC	62G
Graphic Artist, SC	67C
Head, Staffing Services	83L
Intermediate Accountant, SC	79E
Interpreter	60E
Interpreter/Court Reporter Assignment Clerk	73A
Investigator	76B NX
Judicial Administration Specialist, SC	79K N3
Judicial Assistant	72B NX
Judicial Assistant Trainee	F $2,505.00
Judicial Secretary	67J N3
Jury Program Coordinator	79L
Juvenile Traffic Hearing Officer	86G
Law Clerk	77K
Law Librarian, SC	79L
Legal Research Assistant	61D
Light Vehicle Driver	50C

Manager I, SC	R9 N23
Manager II, SC	R10 N23
Manager III, SC	R11 N23
Mental Health Hearing Referee	86C
Office Assistant I	53A
Office Assistant II	57A
Office Assistant III	59A
Office Assistant IV	61A
Office Assistant Trainee	49A
Office Systems Technician I, SC	69E
Office Systems Technician II, SC	76E
Paralegal, SC	68G NW
Payroll Records Supervisor	68F
Payroll Technician, SC	63F
Personnel Assistant	59E
Personnel Technician	75L
Principal Counselor	85A
Principal Program Analyst	85L
Printer I, SC	58K
Printer II, SC	63H N2
Printing Production Supervisor, SC	72A
Probate Attorney I, SC	99C
Probate Attorney II, SC	101A
Probate Decree Clerk	59G
Procurement Assistant	60B
Procurement Assistant II, SC	66A
Program Analyst	75L
Program Specialist	70D
Property Custodian Auditor	59A
Public Information Officer, SC	R10 N23
Records Assistant	59D
Referee	FD $349.74
Research Attorney	94C NW
Secretary I	62G
Secretary II	69J
Secretary to Deputy Executive Officer, SC	77J
Secretary to Grand Jury	77H
Secretary to Presiding Judge	85J
Secretary to the Assistant Presiding Judge, SC	79J

Secretary to the Executive Officer/Clerk of the Superior Court	83J
Senior Accountant, SC	85E
Senior Administrative Secretary, SC	75J
Senior Counselor	82A
Senior Court Services Liaison, SC	68F
Senior Departmental Personnel Technician	79L
Senior Electronic Recording Monitor, SC	68F
Senior Employee Relations Representative, SC	90K
Senior Family Mediator	86C
Senior Judicial Assistant, SC	80K
Senior Judicial Secretary	70J N3
Senior Office Assistant I	63A
Senior Office Assistant II	66J
Senior Personnel Assistant	69B
Senior Probate Decree Clerk	65F
Senior Program Analyst	79L
Senior Property Custodian–Auditor	64L
Senior Word Processor	61G
Special Assistant	R8 N23
Special Assistant, Appellate Department, SC	80J
Staff Assistant I	63A
Staff Assistant II	70A
Staff Attorney, Planning and Research, SC	91C NW
Stenographic Clerk, Family Law Court	71G
Student Professional Worker, SC	FH $8.81
Student Worker, SC	FH $7.28
Superior Court Clerk	72B NX
Supervising Computer Operator, SC	69E
Supervising Court Exhibits Custodian I	66C
Supervising Court Exhibits Custodian II	72F
Supervising District Office Clerk	70B
Supervising Law Clerk	79K
Supervising Paralegal, SC	74G NX
Supervising Probate Attorney, SC	102D
Supervising Probate Decree Clerk	76D
Supervisor, Computer Support Services, SC	74H
Supervisor, Records Section, SC	69E
Training Officer, SC	83L
Warehouse Worker I, SC	58B

Warehouse Worker II, SC	62B
Warehouse Worker Aide, M.C., NCS	56B

Whenever a reference to numbered salary schedules and notes is made in this section, those found in the Los Angeles County Code, Title 6, shall apply. Whenever the compensation of superior court judges is adjusted, the flat rate salaries for court commissioners and referees shall be adjusted to maintain the salary relationship of 85 percent of the annual compensation of superior court judges.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F—Flat rate per month

FD—Flat rate per day

FH—Flat rate per hour

As defined in the Los Angeles County Code Section 6.28.040, the following abbreviation is used in conjunction with or instead of schedule or range numbers:

N—Note (refers to Notes at end of Section 6.28.050)

"R" or "A" indicates a position's inclusion in the County's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the county code.

(b) This section shall become operative on January 1, 2000, and shall remain in effect only until July 1, 2000, and as of that date is repealed.

SEC. 1.6. Section 69894.1 is added to the Government Code, to read:

69894.1. (a) Officers and employees of the superior court shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Schedule
Accountant, SC	73K
Accounting Officer II, SC	80F
Accounting Technician	59A
Administrative Assistant I	62K N2
Administrative Assistant II	72G
Administrative Assistant III	76C
Administrative Judicial Secretary	75F N3
Administrative Secretary	74F
Administrator I, SC	R11 N23
Administrator II, SC	R12 N23
Administrator III, SC	R13 N23
Arbitration/Judicial Assignment Administrator, SC	87F

Assistant Director, Management Systems, SC	R10 N23
Assistant Division/District Chief, SC	85F
Assistant Head, Office Services	70D
Chief Attorney, Planning and Research, SC	100L NW
Chief Clerk	72B
Chief, Management Systems, SC	92H
Chief, Office and Special Support Services, SC	81F
Child Custody Evaluator	86L
Computer Equipment Operator, SC	57B
Computer System Operator, SC	63F
Court Commissioner	F $7,606.79
Court Exhibits Custodian	63D
Court Facilities and Property Services Coordinator	77G
Court Reporter	86K NZ
Court Services Administrator I, SC	R9 N23
Court Services Administrator II, SC	R10 N23
Court Services Liaison, SC	61H
Courtroom Assistant, SC	63H
Criminal Courts Coordinator	R10 N23
Data Conversion Equipment Operator	58G
Data Conversion Supervisor I, SC	63C
Data Processing Contracts Administrator, SC	86B
Data Processing Manager, SC	91D
Deputy Executive Officer, SC	R15 N23
Director, Capital Projects/Facilities Management, SC	R12 N23
Director, SC	R14 N23
District Jury Coordinator	61A
Division Chief, Family Court Services, SC	R9 N23
Division Chief, Mental Health Services, SC	R9 N23
EDP Programmer Analyst I, SC	77H N2
EDP Programmer Analyst II, SC	79H N2
EDP Senior Programmer Analyst, SC	84G
EDP Supervising Programmer Analyst, SC	87L
Electronic Recording Monitor	61H
Employee Relations Representative, SC	85F
Executive Officer/Clerk of the Superior Court	R18 N23
Family Law Attorney, SC	91B NX
Family Law Facilitator, SC	93B NX
Finance Officer, Mandatory Expense, SC	89E
Financial Evaluator, SC	62G

Graphic Artist, SC	67L
Head, Staffing Services	84H
Intermediate Accountant, SC	80B
Interpreter	61B
Interpreter/Court Reporter Assignment Clerk	73A
Investigator	76K NX
Judicial Administration Specialist, SC	80G
Judicial Assistant	72K NX
Judicial Assistant Trainee	F $2,505.00
Judicial Secretary	68F N3
Jury Program Coordinator	80H
Juvenile Traffic Hearing Officer	87D
Law Clerk	78G
Law Librarian, SC	80H
Legal Research Assistant	62A
Light Vehicle Driver	50C
Manager I, SC	R9 N23
Manager II, SC	R10 N23
Manager III, SC	R11 N23
Mental Health Hearing Referee	86L
Office Assistant I	53A
Office Assistant II	57A
Office Assistant III	59A
Office Assistant IV	61A
Office Assistant Trainee	49A
Office Systems Technician I, SC	70B
Office Systems Technician II, SC	77B
Paralegal, SC	69D NW
Payroll Records Supervisor	69C
Payroll Technician, SC	63F
Personnel Assistant	60B
Personnel Technician	76H
Principal Counselor	85J
Principal Program Analyst	86H
Printer I, SC	58K
Printer II, SC	63H N2
Printing Production Supervisor, SC	72J
Probate Attorney I, SC	99L
Probate Attorney II, SC	101J
Probate Decree Clerk	59G
Procurement Assistant	60B
Procurement Assistant II, SC	66J

Program Analyst	76H
Program Specialist	71A
Property Custodian Auditor	59A
Public Information Officer, SC	R10 N23
Records Assistant	59D
Referee	FD $349.74
Research Attorney	94L NW
Secretary I	62G
Secretary II	70F
Secretary to Deputy Executive Officer, SC	78F
Secretary to Grand Jury	78E
Secretary to Presiding Judge	86F
Secretary to the Assistant Presiding Judge, SC	80F
Secretary to the Executive Officer/Clerk of the Superior Court	84F
Senior Accountant, SC	86B
Senior Administrative Secretary, SC	76F
Senior Counselor	82J
Senior Court Services Liaison, SC	69C
Senior Departmental Personnel Technician	80H
Senior Electronic Recording Monitor, SC	69C
Senior Employee Relations Representative, SC	91G
Senior Family Mediator	86L
Senior Judicial Assistant, SC	81G
Senior Judicial Secretary	71F N3
Senior Office Assistant I	63J
Senior Office Assistant II	67F
Senior Personnel Assistant	69K
Senior Probate Decree Clerk	66C
Senior Program Analyst	80H
Senior Property Custodian–Auditor	65H
Senior Word Processor	61G
Special Assistant	R8 N23
Special Assistant, Appellate Department, SC	81F
Staff Assistant I	63J
Staff Assistant II	70J
Staff Attorney, Planning and Research, SC	91L NW
Stenographic Clerk, Family Law Court	71G
Student Professional Worker, SC	FH $8.81
Student Worker, SC	FH $7.28
Superior Court Clerk	72K NX
Supervising Computer Operator, SC	70B

Supervising Court Exhibits Custodian I	66L
Supervising Court Exhibits Custodian II	73C
Supervising District Office Clerk	70K
Supervising Law Clerk	80G
Supervising Paralegal, SC	75D NX
Supervising Probate Attorney, SC	103A
Supervising Probate Decree Clerk	77A
Supervisor, Computer Support Services, SC	75E
Supervisor, Records Section, SC	70B
Training Officer, SC	84H
Warehouse Worker I, SC	58B
Warehouse Worker II, SC	62B
Warehouse Worker Aide, M.C., NCS	56B

Whenever a reference to numbered salary schedules and notes is made in this section, those found in the Los Angeles County Code, Title 6, shall apply. Whenever the compensation of superior court judges is adjusted, the flat rate salaries for court commissioners and referees shall be adjusted to maintain the salary relationship of 85 percent of the annual compensation of superior court judges.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F—Flat rate per month.

FD—Flat rate per day.

FH—Flat rate per hour.

As defined in the Los Angeles County Code, Section 6.28.040, the following abbreviation is used in conjunction with or instead of schedule or range numbers.

N—Note (refers to Notes at end of Section 6.28.050).

"R" or "A" indicates a position's inclusion in the County's management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the county code.

(b) This section shall become operative on July 1, 2000, and shall remain in effect until January 1, 2001, and as of that date is repealed.

SEC. 1.7. Section 69894.1 is added to the Government Code, to read:

69894.1. (a) Officers and employees of the superior court shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Schedule
Accountant, SC	74G
Accounting Officer II, SC	81C
Accounting Technician	59J

Administrative Assistant I	63G N2
Administrative Assistant II	73D
Administrative Assistant III	76L
Administrative Judicial Secretary	76C N3
Administrative Secretary	75C
Administrator I, SC	R11 N23
Administrator II, SC	R12 N23
Administrator III, SC	R13 N23
Arbitration/Judicial Assignment Administrator, SC	88C
Assistant Director, Management Systems, SC	R10 N23
Assistant Division/District Chief, SC	86C
Assistant Head, Office Services	71A
Chief Attorney, Planning and Research, SC	101H NW
Chief Clerk	72K
Chief, Management Systems, SC	93E
Chief, Office and Special Support Services, SC	82C
Child Custody Evaluator	87H
Computer Equipment Operator, SC	57K
Computer System Operator, SC	64C
Court Commissioner	F $7,606.79
Court Exhibits Custodian	63D
Court Facilities and Property Services Coordinator	78D
Court Reporter	87G NZ
Court Services Administrator I, SC	R9 N23
Court Services Administrator II, SC	R10 N23
Court Services Liaison, SC	61H
Courtroom Assistant, SC	63H
Criminal Courts Coordinator	R10 N23
Data Conversion Equipment Operator	58G
Data Conversion Supervisor I, SC	63L
Data Processing Contracts Administrator, SC	86K
Data Processing Manager, SC	92A
Deputy Executive Officer, SC	R15 N23
Director, Capital Projects/Facilities Management, SC	R12 N23
Director, SC	R14 N23
District Jury Coordinator	61A
Division Chief, Family Court Services, SC	R9 N23
Division Chief, Mental Health Services, SC	R9 N23
EDP Programmer Analyst I, SC	78E N2

EDP Programmer Analyst II, SC	80E N2
EDP Senior Programmer Analyst, SC	85D
EDP Supervising Programmer Analyst, SC	88H
Electronic Recording Monitor	61H
Employee Relations Representative, SC	86C
Executive Officer/Clerk of the Superior Court	R18 N23
Family Law Attorney, SC	91K NX
Family Law Facilitator, SC	93K NX
Finance Officer, Mandatory Expense, SC	90B
Financial Evaluator, SC	62G
Graphic Artist, SC	68H
Head, Staffing Services	85E
Intermediate Accountant, SC	80K
Interpreter	61K
Interpreter/Court Reporter Assignment Clerk	73A
Investigator	77G NX
Judicial Administration Specialist, SC	81D N3
Judicial Assistant	73G NX
Judicial Assistant Trainee	F $2,505.00
Judicial Secretary	69C N3
Jury Program Coordinator	81E
Juvenile Traffic Hearing Officer	88A
Law Clerk	79D
Law Librarian, SC	81E
Legal Research Assistant	62J
Light Vehicle Driver	50C
Manager I, SC	R9 N23
Manager II, SC	R10 N23
Manager III, SC	R11 N23
Mental Health Hearing Referee	87H
Office Assistant I	53A
Office Assistant II	57A
Office Assistant III	59A
Office Assistant IV	61A
Office Assistant Trainee	49A
Office Systems Technician I, SC	70K
Office Systems Technician II, SC	77K
Paralegal, SC	70A NW
Payroll Records Supervisor	69L
Payroll Technician, SC	63F
Personnel Assistant	60K
Personnel Technician	77E

Principal Counselor	86F
Principal Program Analyst	87E
Printer I, SC	58K
Printer II, SC	63H N2
Printing Production Supervisor, SC	73F
Probate Attorney I, SC	100H
Probate Attorney II, SC	102F
Probate Decree Clerk	59G
Procurement Assistant	60B
Procurement Assistant II, SC	67F
Program Analyst	77E
Program Specialist	71J
Property Custodian Auditor	59A
Public Information Officer, SC	R10 N23
Records Assistant	59D
Referee	FD $349.74
Research Attorney	95H NW
Secretary I	62G
Secretary II	71C
Secretary to Deputy Executive Officer, SC	79C
Secretary to Grand Jury	79B
Secretary to Presiding Judge	87C
Secretary to the Assistant Presiding Judge, SC	81C
Secretary to the Executive Officer/Clerk of the Superior Court	85C
Senior Accountant, SC	86K
Senior Administrative Secretary, SC	77C
Senior Counselor	83F
Senior Court Services Liaison, SC	69L
Senior Departmental Personnel Technician	81E
Senior Electronic Recording Monitor, SC	69L
Senior Employee Relations Representative, SC	92D
Senior Family Mediator	87H
Senior Judicial Assistant, SC	82D
Senior Judicial Secretary	72C N3
Senior Office Assistant I	64F
Senior Office Assistant II	68C
Senior Personnel Assistant	70G
Senior Probate Decree Clerk	66L
Senior Program Analyst	81E
Senior Property Custodian–Auditor	66E
Senior Word Processor	61G

Special Assistant	R8 N23
Special Assistant, Appellate Department, SC	82C
Staff Assistant I	64F
Staff Assistant II	71F
Staff Attorney, Planning and Research, SC	92H NW
Stenographic Clerk, Family Law Court	71G
Student Professional Worker, SC	FH $8.81
Student Worker, SC	FH $7.28
Superior Court Clerk	73G NX
Supervising Computer Operator, SC	70K
Supervising Court Exhibits Custodian I	67H
Supervising Court Exhibits Custodian II	73L
Supervising District Office Clerk	71G
Supervising Law Clerk	81D
Supervising Paralegal, SC	76A NX
Supervising Probate Attorney, SC	103J
Supervising Probate Decree Clerk	77J
Supervisor, Computer Support Services, SC	76B
Supervisor, Records Section, SC	70K
Training Officer, SC	85E
Warehouse Worker I, SC	58B
Warehouse Worker II, SC	62B
Warehouse Worker Aide, M.C., NCS	56B

Whenever a reference to numbered salary schedules and notes is made in this section, those found in the Los Angeles County Code, Title 6, shall apply. Whenever the compensation of superior court judges is adjusted, the flat rate salaries for court commissioners and referees shall be adjusted to maintain the salary relationship of 85 percent of the annual compensation of superior court judges.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F—Flat rate per month.

FD—Flat rate per day.

FH—Flat rate per hour.

As defined in the Los Angeles County Code, Section 6.28.040, the following abbreviation is used in conjunction with or instead of schedule or range numbers:

N—Note (refers to Notes at end of Section 6.28.050).

"R" or "A" indicates a position's inclusion in the County's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the county code.

(b) This section shall become operative on January 1, 2001.

SEC. 2. Section 69899.5 of the Government Code is repealed.

SEC. 2.1. Section 69899.5 is added to the Government Code, to read:

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

Number of Positions	Title	Salary Range
12	Accounting Assistant II—Superior Court	CD36
1	Accounting Office Supervisor I—Superior Court	CD42
1	Accounting Office Supervisor II—Superior Court	CD46
1	Accounting Specialist	CD39
20	Appeals and Calendar Clerk	CD37
20	Attorney III—Superior Court	L03
1	Buying Technician	CA43
8	Court Investigator II	CA55
2	Court Investigator III	CA57
29	Court Mediator II	CA62
41	Courtroom Assistant	CD39
16	Data Entry Specialist—Superior Court	CD39
1	Data Entry Supervisor III	CD46
18	Data Entry Tech	CD37
3	Executive Secretary II—Superior Court	CD50
15	Information Processing Technician—Superior Court	CD37
7	Information Systems Technician—Superior Court	CA57
4	Juvenile Court Referee	80% of Salary of Superior Court Judge
4	Legal Property Technician	CA40
3	Mediation/Investigative Services Supervisor	CA66
93	Office Assistant—Superior Court	CD33
37	Office Specialist—Superior Court	CD39

4	Office Supervisor A	CD40
5	Office Supervisor B	CD42
1	Office Supervisor C	CD44
4	Office Supervisor D	CD46
5	Office Technician	CD33
0	Personnel Services Coordinator II	CA47
1	Probate Calendar Coordinator	CA59
2	Probate Checker	CA48
6	Probate Examiner II	CA55
1	Secretary I—Superior Court	CD37
5	Senior Accounting Assistant	CD41
1	Senior Accounting Office Supervisor I	CD50
6	Senior Judicial Secretary	CD44
3	Senior Office Supervisor A/B—Superior Court	CD47
0	Senior Personnel Services Coordinator	CA51
4	Senior Systems/Programmer Analyst—Superior Court	CA72
1	Staff Assistant	CA47
5	Store Clerk—Superior Court	CH07
2	Storekeeper I—Superior Court	CH10
142	Superior Court Clerk II	CS02
14	Superior Court Commissioner	85% of Salary of Superior Court Judge
37	Superior Court Manager	MLSC
16	Superior Court Supervisor I	CD55
5	Superior Court Supervisor II	CD58
1	Supervising Attorney—Superior Court	L04
1	Supervising Judicial Secretary—Superior Court	CD49
1	Supervising Probate Examiner	CA61
8	Systems/Programmer Analyst I—Superior Court	CA62
11	Systems/Programmer Analyst II—Superior Court	CA66

1	Technical Systems Specialist	CA69
2	Utility Worker/Driver	CA34
10	Writs and Judgment Clerk	CD38

The references to a numbered salary range in this section are to the salary schedule adopted by the Coordinated Trial Courts of Orange County Court Executive Oversight Committee.

Pursuant to the Lockyer-Isenberg Trial Court Funding Act of 1997 and Section 77200 et seq., the County of Orange has no obligation for the salary and benefits of commissioners referees, officers, assistants, and other employees of the Superior Court appointed pursuant to this section. Funding for trial court operations shall be solely the responsibility of the state.

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

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

All court personnel shall be entitled to any step advancement, vacation, sick leave, holiday benefits, other leaves of absence, lump-sum payments for sick leave and vacation when separated from the service, inclusion in the retirement system of the County of Orange and other benefits as may be adopted in a memorandum of understanding with a recognized employee organization or as may be directed by rules adopted by a majority of the judges.

Superior court commissioners and juvenile court referees shall be entitled to any benefits as may be directed by rules adopted by the majority of the judges.

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

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

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

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

SEC. 3. Section 69904 of the Government Code is amended to read:

69904. (a) In a county of the third class, as determined by the 1970 federal census, a majority of the judges of the superior court may establish additional titles and pay rates as are required and may appoint and employ those commissioners, officers, assistants, and other employees as are deemed necessary for the performance of the duties and exercise of the power conferred by law upon the court and its members. Titles and rates of compensation of all the commissioners, officers, assistants, and other employees may be adjusted from time to time by a majority of the judges of the court.

(b) All personnel appointed by the judges pursuant to this or any other section shall be exempt from civil service and shall be attachés of the court. They shall serve at the pleasure of a majority of the judges of the court and may at any time be removed by the majority of the judges in their discretion. In addition to the benefits authorized under Article 1 (commencing with Section 53200) of Chapter 2 of Title 5 and Sections 69902 and 69902.5 and in accordance with personnel regulations adopted by a majority of the judges, those personnel shall be entitled to step advancement, vacation, sick leave, holiday benefits, other leaves of absence, and other benefits, including participation in the county's tuition refund and suggestion award programs, at levels no less than those authorized for employees in the classified service of the county. In the event the regulations allow credit for sick leave benefits or other benefits accumulated by the appointee while employed in county civil service, no credit shall be allowed if the appointee elected to receive any payment, including any partial payment, for any of those benefits upon separation from county civil service. Any person terminating employment with county civil service and immediately accepting appointment with the court may, if provided by the rules of the Civil Service Commission, return to civil service within two years of that appointment, provided the return shall not entitle that employee to any additional rights by reason of his or her employment with the court, other than those to which he or she would have been entitled if he or she had remained in county civil service during the period of employment with the court.

(c) Juvenile court referees in their first year of service shall receive a salary equal to 75 percent of the salary of a judge of the superior court, and in their second year of service they shall receive a salary equal to 80 percent of the salary of a judge of the superior court; thereafter they shall receive a salary equal to 85 percent of the

salary of a judge of the superior court. Each juvenile court referee who has served as a referee prior to the effective date of this act shall be entitled to credit for the time of service in the computation of his or her salary as prescribed in this section. Nothing in this section shall operate to reduce the compensation which the referee was entitled on the day prior to the effective date of this section.

(d) With the approval of the judges of the court, each juvenile court referee and each legal research assistant appointed pursuant to law, may be reimbursed for any payment he or she makes for his or her annual State Bar of California membership fee.

SEC. 4. Section 69905 of the Government Code is amended to read:

69905. In any county a majority of the judges of the superior court may appoint research assistants. The number and compensation of research assistants shall be set by the judges. The compensation of those research assistants shall be paid by the county in which they serve.

SEC. 5. Section 70044.5 of the Government Code is amended to read:

70044.5. In San Mateo County, official reporters shall be appointed by the judges of the consolidated superior and municipal courts pursuant to the provisions of Section 70043 or 72194 and shall serve at the pleasure of the judges.

(a) The biweekly salary of each regular official reporter for the performance of duties required of each such reporter by law shall be at the rates specified in salary range number 3007 of the salary schedule set forth in Section 73525.

At the time each reporter is hired, the salary of that reporter shall be fixed in the same manner as provided for classified or unclassified employees of the county under the authority of the county charter. A step advancement from step A to step B may be granted on the first day of the pay period following the completion of 26 full weeks of service in the position. A person may advance to steps C, D, and E upon completion of successive 52-week periods of service. All merit increases as provided herein shall be made at the determination of the judges of the court.

In addition to new employees, the salaries herein provided for shall be applicable to regular official reporters employed by the county on the effective date of this section and for the purpose of determining the salaries to be paid after this section becomes effective, all years of service rendered by reporters to the county prior to the effective date of this section shall be counted in determining the salary to which they are entitled under the salary schedule above mentioned.

The per diem compensation for pro tempore reporters shall be one-tenth of step E in the appropriate biweekly salary range established for official reporters, provided, however, that that rate of per diem compensation shall be prorated on the basis of one-half day

of compensation if the pro tempore reporter renders only one-half day of service.

Vacation allowances and sick leave allowances for official reporters shall be the same as provided for classified or unclassified employees of the county under the authority of the county charter.

(b) If the Board of Supervisors of San Mateo County provides by ordinance or by agreement pursuant to Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, for a rate of compensation which is higher than that provided by subdivision (a), the higher rate of compensation shall be effective at the same time and in the same manner as other rates of pay for San Mateo County employees generally. Those higher rates shall be payable by the county in the same manner and from the same funds as other salary demands against the county. Any change in compensation made pursuant to this subdivision shall be on an interim basis and shall expire on January 1 after the adjournment of the next regular session of the Legislature unless ratified or superseded by a statute enacted at the session.

(c) During the hours which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not engage in or solicit to engage in any other employment in their professional capacity.

Each official reporter shall perform the duties required of him or her by law. In addition, he or she shall render stenographic or clerical assistance, or both, to the judge or judges of the consolidated superior and municipal courts as the judge or judges may direct.

SEC. 5.1. Section 72608 of the Government Code is amended to read:

72608. Certain classes of positions prescribed in Article 1.5 (commencing with Section 72620), Article 1.6 (commencing with Section 72630), Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), and Article 4 (commencing with Section 72750) are deemed to be related in job and compensation to position classifications included in the Los Angeles County Code, and in the case of certain classes of positions, to the administrative series included in Section 69894.1. In order to maintain the relationship of compensation and employee rights and benefits between officers and attachés of municipal courts and county or superior court employees having commensurate duties and responsibilities and to provide appropriate salary adjustments and employee rights and benefits for related classes of court positions, this section shall govern salary adjustments and employee rights and benefits for officers and attachés of municipal courts in Los Angeles County.

On the effective date of any amendment to the Los Angeles County Code adjusting the salary of a county employee classification listed in the table of positions set forth in this section, or on the

effective date of a resolution or ordinance by the board of supervisors approving interim salary adjustments for superior court classes pursuant to Section 69894.2, the salary of the related municipal court position listed opposite thereto shall be adjusted an equivalent number of schedules or steps in a schedule in the salary schedule to which that position is attached. If the level of compensation established by any salary adjustment is not reflected in the salary schedule number provided for any court classification, the adjustment shall apply to each position in the classification on the effective date of the act fixing the salary schedule number. Classes of positions in the Management Appraisal and Performance Plan shall be compensated and adjusted in accordance with provisions approved by the board of supervisors.

Likewise, the salary of any court classification being enumerated in Article 1.5 (commencing with Section 72620), Article 1.6 (commencing with Section 72630), Article 2 (commencing with Section 72640), Article 3 (commencing with Section 72700), or Article 4 (commencing with Section 72750) for the first time as an amendment to this chapter shall be adjusted as necessary on the effective date of that amendment to provide the same relationship to the county classification to which it is attached as that established when the court classification was approved in accordance with Section 72607.

Table of Positions

Municipal Court Class	County or Superior Court Class
Officer Series	
Marshal	Commander
Assistant Marshal	Commander
Commander, Marshal	Commander
Captain, Marshal	Captain
Lieutenant, Marshal	Lieutenant
Sergeant, Marshal	Sergeant
Deputy Marshal IV	Deputy Sheriff IV
Deputy Marshal	Deputy Sheriff
Deputy Marshal Trainee	Deputy Sheriff Trainee
Deputy Marshal, Matron	Custody Assistant
Deputy Clerk, Custody Officer	Custody Assistant
Legal Services Specialist, Marshal	Safety Police Officer II
Security Officer I, Marshal	Safety Police Officer I
Security Officer II, Marshal	Safety Police Officer I

Municipal Courts Planning and Research

Chief Staff Attorney, P & R	Senior Deputy County Counsel
Assistant Chief Staff Attorney, P & R	Senior Deputy County Counsel
Staff Attorney III, P & R	Senior Deputy County Counsel
Staff Attorney II, P & R	Senior Deputy County Counsel
Staff Attorney I, P & R	Senior Deputy County Counsel
Legal Research Assistant, P & R	Senior Deputy County Counsel
Planning Analyst, P & R	Program Specialist I, CAO
Planning Analyst Aide, P & R	Administrative Staff Trainee, CAO
Principal Budget Analyst, P & R	Program Specialist I, CAO
Head, Management Services, P & R, NCS	Program Specialist I, CAO
Senior Planning Analyst, P & R	Program Specialist I, CAO

Courtroom Series

All positions subject to civil service provisions enumerated in Articles 2, 3, and 4 which are not listed in this table.	Superior Court Clerk
Court Clerk, M.C.	Judicial Assistant (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)
Municipal Court Clerk Trainee	Administrative Aide
Municipal Court Judicial Assistant, NCS	Judicial Assistant (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)
Municipal Court Judicial Assistant Trainee, NCS	Administrative Aide (Salary adjustments and insurance benefits only) Intermediate Typist-Clerk (All other benefits)

Management Series

Court Administrator, LAMC	Management Appraisal and Performance Plan
Assistant Court Administrator, LAMC, NCS	Management Appraisal and Performance Plan
Deputy Court Administrator, Admin. and Financial Service, LAMC, NCS	Management Appraisal and Performance Plan
Deputy Court Administrator, Operations, LAMC, NCS	Management Appraisal and Performance Plan
Division Chief, Operations, LAMC	Program Specialist I, CAO
Division Chief, Operations, NCS, LAMC	Program Specialist I, CAO
Personnel Administrator, NCS, M.C.	Program Specialist I, CAO
Senior Programming & System Analyst, M.C.	EDP Principal Programmer Analyst
Senior Programming & System Analyst, M.C., NCS	EDP Principal Programmer Analyst
Managing Court Reporter, NCS, LAMC	Court Reporter (Salary adjustment only) Program Specialist I, CAO (All other benefits)
Capital Projects Manager, M.C., NCS	Program Specialist I, CAO
Assistant Capital Projects Manager, NCS, LAMC	Program Specialist I, CAO
Court Information Officer, M.C., NCS	Public Information Officer I
Chief, Systems Division, NCS, M.C.	Data Systems Coordinator
Assistant Chief, Systems Division, M.C., NCS	Data Systems Coordinator
Senior Court Manager, M.C., NCS	Program Specialist I, CAO

Assistant Division Chief Operations	Program Specialist I, CAO
Assistant Division Chief Operations, NCS, LAMC	Program Specialist I, CAO
Court Manager, M.C., NCS	Program Specialist I, CAO
Administrative Services Manager, M.C., NCS	Program Specialist I, CAO
Court Administrator (except Los Angeles Judicial District)	Structure adjustment to the nearest one-quarter of one percent approved by the board of supervisors for application to the ranges established for classes assigned to the Management Appraisal and Performance Plan
Assistant Chief Deputy, Clerk, M.C.	Program Specialist I, CAO
Assistant Court Administrator (1 judge court)	Court Administrator (1 judge court)
Assistant Court Administrator (2 judge court)	Court Administrator (2 judge court)
Assistant Court Administrator (3, 4, 5 judge court)	Court Administrator (3, 4, 5 judge court)
Assistant Court Administrator (3, 4, 5 judge court) NCS	Court Administrator (3, 4, 5 judge court)
Assistant Court Administrator (6 judge court)	Court Administrator (6 judge court)
Assistant Court Administrator (7 judge court)	Court Administrator (7 judge court)
Assistant Court Administrator (8 judge court)	Court Administrator (8 judge court)
Assistant Court Administrator (9 judge court)	Court Administrator (9 judge court)
Assistant Court Administrator (9 judge court), NCS	Court Administrator (9 judge court)
Assistant Court Administrator (10, 11, 12 judge court)	Court Administrator (10, 11, 12 judge court)
Judicial Management Intern, M.C., NCS	Administrative Aide
Division Chief, Long Beach M.C.	Program Specialist I, CAO
Principal Clerk, Los Angeles	Judicial Assistant (Salary adjustment only)

	Program Specialist I, CAO (All other benefits)
Principal Clerk, M.C., NCS	Judicial Assistant (Salary adjustment only)
	Program Specialist I, CAO (All other benefits)
Training Officer, NCS, M.C.	Program Specialist I, CAO
Chief Deputy Clerk, M.C., NCS	Program Specialist I, CAO
Division Chief, NCS, M.C.	Program Specialist I, CAO
Executive Officer, Administratively Consolidated Municipal Courts, NCS	Court Administrator (10, 11, 12 judge court)
District Court Administrator (1 judge court), NCS	Court Administrator (1 judge court)
District Court Administrator (3, 4, 5 judge court), NCS	Court Administrator (3, 4, 5 judge court)
District Court Administrator (9 judge court), NCS	Court Administrator (9 judge court)

Personnel–Administrative Services–Accounting Series

Head, Fiscal & Administrative Services, Marshal	Program Specialist I, CAO
Head Personnel Technician, M.C., NCS	Head Departmental Personnel Technician
Head Personnel Technician, Marshal	Head Departmental Personnel Technician
Personnel Technician, M.C.	Senior Departmental Personnel Technician
Personnel Technician, M.C., NCS	Senior Departmental Personnel Technician
Personnel Technician, Marshal	Senior Departmental Personnel Technician
Personnel Assistant, M.C.	Departmental Personnel Assistant
Personnel Assistant, M.C., NCS	Departmental Personnel Assistant
Personnel Assistant, Marshal	Departmental Personnel Assistant
Safety Officer, Marshal	Safety Officer

Senior Personnel Assistant, M.C.	Senior Departmental Personnel Assistant
Senior Personnel Assistant, Marshal	Senior Departmental Personnel Assistant
Senior Personnel Assistant, M.C., NCS	Senior Departmental Personnel Assistant
Senior Staff Assistant, Marshal	Program Specialist I, CAO
Staff Assistant, Marshal	Program Specialist I, CAO
Principal Clerk, Marshal	Program Specialist I, CAO
Assistant Head, Fiscal & Administrative Services, Marshal	Program Specialist I, CAO
Executive Assistant, Presiding Judges Association	Program Specialist I, CAO
Principal Administrative Assistant, M.C.	Administrative Assistant III
Principal Administrative Assistant, M.C., NCS	Administrative Assistant III
Principal Assistant, Fiscal Services, Marshal	Program Specialist I, CAO
Principal Personnel Assistant, M.C.	Principal Departmental Personnel Assistant
Principal Personnel Assistant, M.C., NCS	Principal Departmental Personnel Assistant
Supervising Accountant, M.C., NCS	Senior Accountant Auditor
Senior Administrative Assistant, M.C.	Administrative Assistant II
Senior Administrative Assistant, M.C., NCS	Administrative Assistant II
Administrative Assistant, M.C.	Administrative Assistant I
Administrative Assistant, M.C., NCS	Administrative Assistant I
Staff Assistant, M.C.	Staff Assistant I
Staff Assistant, M.C., NCS	Staff Assistant I
Statistical Analyst, M.C., NCS	Statistical Analyst
Accountant, M.C.	Accountant II
Accountant, M.C., NCS	Accountant II
Accounting Technician, M.C.	Accounting Technician I
Accounting Technician, M.C., NCS	Accounting Technician I

Intermediate Accountant, M.C.	Intermediate Accountant Auditor
Intermediate Accountant, M.C., NCS	Intermediate Accountant Auditor
Senior Accountant, M.C.	Intermediate Accountant Auditor
Senior Accountant, M.C., NCS	Intermediate Accountant Auditor
Facilities Services Assistant, M.C.	Facilities Services Assistant
Facilities Services Assistant, M.C., NCS	Facilities Services Assistant
Facilities Planning Assistant, M.C.	Facilities Planning Assistant
Facilities Planning Assistant, M.C., NCS	Facilities Planning Assistant
Staff Development Specialist, Muni Ct	Staff Development Specialist I, D.A.
Staff Development Specialist, M.C., NCS	Staff Development Specialist I, D.A.
Account Clerk, M.C.	Account Clerk II
Financial Evaluator, M.C., NCS	Financial Evaluator
Financial Evaluator Assistant, M.C., NCS	Financial Evaluator Assistant
Personnel Clerk, M.C.	Senior Typist-Clerk
Personnel Clerk, M.C., NCS	Senior Typist-Clerk
Management Services Specialist, M.C., NCS	Program Specialist I, CAO

Secretarial and Stenographic Series

Secretary to Presiding Judge, M.C.	Executive Secretary II
Secretary to Presiding Judge, M.C., NCS	Executive Secretary II
Executive Secretary, M.C.	Executive Secretary II
Executive Secretary, M.C., NCS	Executive Secretary II
Senior Management Secretary, LAMC	Executive Secretary II
Senior Management Secretary, M.C., NCS	Executive Secretary II

Management Secretary, M.C.	Executive Secretary II
Management Secretary, M.C., NCS	Executive Secretary II
Management Secretary II, M.C., NCS	Senior Management Secretary II
Executive Secretary, Marshal	Executive Secretary II
Senior Secretary II, Muni Ct	Senior Secretary II
Senior Secretary II, M.C., NCS	Senior Secretary II
Management Secretary, Marshal	Senior Secretary II
Senior Judicial Secretary, Muni Ct	Senior Secretary II
Senior Judicial Secretary, M.C., NCS	Senior Secretary II
Senior Secretary III, Muni Ct	Senior Secretary II
Senior Secretary III, M.C., NCS	Senior Secretary II
Senior Secretary I, Muni Ct	Senior Secretary II
Senior Secretary I, M.C., NCS	Senior Secretary II
Secretary, Marshal	Senior Secretary II
Secretary, Muni Ct	Senior Secretary II
Secretary, M.C., NCS	Senior Secretary II
Senior Secretary, Marshal	Senior Secretary II
Stenographer, M.C.	Legal Office Support Assistant II
Stenographer, M.C., NCS	Legal Office Support Assistant II

Clerical Series

Deputy Municipal Court Clerk I	Intermediate Typist
Deputy Municipal Court Clerk I, NCS	Intermediate Typist-Clerk
Deputy Clerk II, Marshal	Intermediate Typist-Clerk
Deputy Clerk I, Marshal	Intermediate Typist-Clerk
Deputy Municipal Court Clerk II	Intermediate Typist-Clerk
Deputy Municipal Court Clerk II, NCS	Intermediate Typist-Clerk
Deputy Clerk III, M.C.	Intermediate Typist-Clerk
Deputy Clerk III, M.C., NCS	Intermediate Typist-Clerk
Deputy Clerk III, Marshal	Intermediate Typist-Clerk
Administrative Clerk, Marshal	Intermediate Typist-Clerk

Clerical Aide, Municipal Court	Intermediate Typist-Clerk
Clerical Aide, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant I, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant II, M.C., NCS	Intermediate Typist-Clerk
Office Services Assistant III, M.C., NCS	Intermediate Typist-Clerk
Senior Payroll Clerk, Marshal	Payroll Clerk I
Supervising Payroll Clerk, Marshal	Supervising Payroll Clerk I
Payroll Clerk, Marshal	Assistant Payroll Clerk II
Assistant Payroll Technician, M.C., NCS	Payroll Clerk I
Payroll Technician, M.C., NCS	Payroll Clerk II
Supervising Payroll Technician, M.C., NCS	Supervising Payroll Clerk II
Marshal's Dispatcher I	Communication Operator II, Sheriff
Marshal's Dispatcher II	Communication Operator II, Sheriff
Supervising Deputy Clerk I, M.C.	Supervising Typist-Clerk
Supervising Deputy Clerk I, M.C., NCS	Supervising Typist-Clerk
Supervising Deputy Clerk II, M.C.	Superior Court Clerk
Supervising Deputy Clerk II, M.C., NCS	Superior Court Clerk
Deputy Clerk Supervisor, M.C., NCS	Supervising Typist-Clerk
Senior Courtroom Clerk, M.C., NCS	Senior Judicial Assistant

Supply, Duplicating, and Miscellaneous Series

Supply and Reproduction Supervisor, Marshal	Warehouse Worker II
Supply and Reproduction Assistant, Marshal	Warehouse Worker II
Warehouse Worker Aide, M.C., NCS	Warehouse Worker Aide

Procurement Assistant I, M.C., NCS	Procurement Assistant I
Procurement Assistant II, M.C.	Procurement Assistant II
Procurement Assistant II, M.C., NCS	Procurement Assistant II
Procurement Aide, M.C.	Procurement Aide
Procurement Aide, M.C., NCS	Procurement Aide
Light Vehicle Driver, Marshal	Communications Messenger Driver
Light Vehicle Driver, M.C., NCS	Communications Messenger Driver
General Maintenance Supervisor, M.C.	General Maintenance Supervisor
General Maintenance Supervisor, M.C., NCS	General Maintenance Supervisor
General Maintenance Worker, M.C.	General Maintenance Worker
General Maintenance Worker, M.C., NCS	General Maintenance Worker
Senior General Maintenance Worker, M.C., NCS	Senior General Maintenance Worker
Student Professional Worker, M.C., NCS	Student Professional Worker
Student Worker, M.C., NCS	Student Worker
Deputy Municipal Court Clerk Aide, NCS	Student Worker
Warehouse Worker I, Marshal	Warehouse Worker I
Warehouse Worker I, M.C., NCS	Warehouse Worker I
Warehouse Worker II, M.C.	Warehouse Worker II
Warehouse Worker II, M.C., NCS	Warehouse Worker II
Warehouse Manager, M.C.	Warehouse Manager
Warehouse Manager, M.C., NCS	Warehouse Manager
Graphic Artist, M.C.	Graphic Artist
Graphic Artist, M.C., NCS	Graphic Artist
Custodian, M.C., NCS	Custodian
Supervising Law Clerk	Supervising Law Clerk (SC)

Supervising Law Clerk, M.C., NCS	Supervising Law Clerk (SC)
Law Clerk, M.C.	Law Clerk (SC)
Interpreter	Interpreter (SC)
Interpreter, M.C., NCS	Interpreter (SC)

Management Information and Data Processing Series

Data Systems Coordinator, M.C.	Data Systems Coordinator
Data Systems Coordinator, M.C., NCS	Data Systems Coordinator
Data Systems Analyst Aide, M.C., NCS	Data Systems Analyst Aide
Data Systems Analyst I, M.C.	Data Systems Analyst I
Data Systems Analyst I, M.C., NCS	Data Systems Analyst I
Data Systems Analyst II, M.C.	Data Systems Analyst II
Data Systems Analyst II, M.C., NCS	Data Systems Analyst II
Data Conversion Supervisor I, M.C.	Data Conversion Supervisor I
Data Conversion Supervisor I, M.C., NCS	Data Conversion Supervisor I
Data Conversion Supervisor III, M.C.	Data Conversion Supervisor III
Data Conversion Supervisor III, M.C., NCS	Data Conversion Supervisor III
EDP Staff Aide, M.C.	Systems Aide
EDP Staff Aide, M.C., NCS	Systems Aide
EDP Support Analyst II, M.C., NCS	EDP Support Analyst II
Supervising Computer Operator, M.C.	Supervising Computer Operator
Supervising Computer Operator, M.C., NCS	Supervising Computer Operator
Computer Operations Supervisor, M.C.	Supervising Computer Operator
Computer Operations Supervisor, M.C., NCS	Supervising Computer Operator
Computer Equipment Operator, M.C.	Computer Equipment Operator

Computer System Operator, M.C.	Computer Systems Operator
Senior Data Control Clerk, M.C.	Senior Data Control Clerk
Data Control Clerk, M.C.	Data Control Clerk
Senior Data Conversion Equipment Operator, M.C.	Senior Data Conversion Equipment Operator
Data Conversion Equipment Operator I, M.C.	Data Conversion Equipment Operator I
Principal Programmer Analyst, M.C.	EDP Principal Programmer Analyst
Principal Programmer Analyst, M.C., NCS	EDP Principal Programmer Analyst
Senior Programmer Analyst, M.C.	EDP Programmer Analyst II
Senior Programmer Analyst, M.C., NCS	EDP Programmer Analyst II
Systems Programmer, M.C.	EDP Systems Programmer
Systems Programmer, M.C., NCS	EDP Systems Programmer
Telecommunications Technician, M.C.	Computer Systems Operator
Telecommunications Technician, M.C., NCS	Computer Systems Operator
Senior Telecommunications Systems Engineer, M.C., NCS	Senior Telecommunications Systems Engineer
Data Processing Specialist I, M.C., NCS	Data Processing Specialist I
Systems Aide, M.C., NCS	Systems Aide
Senior Systems Aide, M.C., NCS	Senior Systems Aide

All classes of positions approved by a majority of the judges of the municipal court and the board of supervisors for inclusion in the Los Angeles County Management Appraisal and Performance (MAP) Plan will be compensated in accordance with this plan as set forth in Part 3, Chapter 6.08, of the Los Angeles County Code. All of these provisions are applicable to participants in the marshal's department, except that for the marshal, the appointing authority is the municipal court judges of Los Angeles County, and for all other participants in the marshal's department, the appointing authority is the marshal. For purposes of MAP Plan administration only, the appointing authority for the court administrator, Los Angeles Judicial District,

is the court's executive board. The court administrator, is the appointing authority for all other participants in the Los Angeles Judicial District.

The presiding judge, the immediate past presiding judge (if still a member of the Los Angeles Municipal Court) and the assistant presiding judge will confer with the court administrator to establish new performance goals and evaluate the completion of previously established goals; these judges will then rate the court administrator's performance using the MAP Plan rating categories established in the county code. The presiding judge shall present this rating to the executive board for ratification at its October meeting. In the event the executive board does not act upon the rating, that rating will stand. In the event a rating is not completed, the court administrator's rating is deemed to be "merit performance." Adjustments to the court administrator's salary will be in accordance with Part 3, Chapter 6.08, of the Los Angeles County Code.

Any existing special pay provision applicable to court classes included in MAP Plan and which is expressed in terms of additional schedules of compensation will be converted to a percentage basis in accordance with the county's plan which equates each schedule with 2.75 percent.

Salary adjustments made pursuant to this section shall be on an interim basis and shall expire 90 days after the adjournment of the next regular session of the Legislature unless ratified at such session.

Officers and attachés of municipal courts in Los Angeles County shall be entitled to all employee rights, programs and benefits, including, but not limited to, paid medical plans, management incentive, management appraisal and performance plan, deferred compensation plans, flexible benefit plans, and early separation programs, parking and cafeteria privileges, longevity pay, shooting allowance, uniform and equipment allowance, and the same rights to meet with those entities which prescribe their compensation, that are provided for or made applicable to the related Los Angeles County and superior court employee classification. Participation in management incentive early separation programs and management appraisal and performance plan shall be established by joint action and approval of a majority of the board of supervisors and a majority of the judges of the court, except in the Los Angeles Judicial District where joint action shall be approved by a majority of the board of supervisors and a majority of the court's executive board.

Bonus Level I assignments of deputy marshals are as follows:

Nineteen positions—assistant commander, small division.

Twelve positions—court supervisor.

Nine positions—field supervisor.

Nine positions—office supervisor.

Three positions—communications and fleet management supervisor.

One position—training officer.
One position—real estate levy/bookkeeping section supervisor.
Bonus Level II assignments of deputy marshals are as follows:
One position—security liaison and investigations.

Deputy marshals with Bonus Level I assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level I positions. Deputy marshals with Bonus Level II assignments shall receive additional compensation in the same amounts, for the same periods, and paid on the same terms, as deputy sheriffs assigned to Bonus Level II positions.

In addition to the salary adjustment otherwise provided by this section, persons employed in the classifications of executive secretary, M.C., senior management secretary, M.C., and secretary to the presiding judge shall receive a one-time only two-schedule salary increase effective January 1, 1989. The resulting salary rate shall constitute the base rates for subsequent salary adjustments.

In addition to the salary provided by the applicable management appraisal and performance plan provisions, a 16.5 percent bonus shall be paid to no more than one position of deputy court administrator in the Los Angeles Municipal Court who is admitted to practice law before all courts in California and required to render legal opinions and provide legal advice to the court administrator and judges.

Any deputy municipal court clerk I, deputy municipal court clerk I, NCS, deputy municipal court clerk II, deputy municipal court clerk II, NCS, deputy clerk III, M.C., deputy clerk III, M.C., NCS, deputy clerk IV, M.C., municipal court judicial assistant, NCS, or court clerk, M.C. who, in addition to a regular courtroom assignment, is required to operate and monitor electronic recording equipment to produce the official record of the court proceedings shall receive a two-schedule increase in compensation while so engaged. Effective January 3, 1989, any deputy clerk IV, M.C., municipal court judicial assistant, NCS, or court clerk, M.C. assigned to a courtroom, who in addition to his or her regular duties, is required to operate and monitor electronic recording equipment to produce a record of court proceedings shall receive an increase of eight standard salary levels while so engaged. However, in no event shall a person who is receiving additional compensation for performing duties involving greater skill and responsibility as described in subdivision (b) of Section 72705 or subdivision (k), (*l*), or (m) of Section 72755 be eligible to receive additional compensation pursuant to this subdivision, except for a deputy clerk III, M.C. or deputy clerk III, M.C., NCS assigned to the regular duties of a deputy clerk IV, M.C. or court clerk, M.C. as provided in subdivision (j) of Section 72755.

SEC. 5.2. Section 72609 of the Government Code is amended to read:

72609. (a) Except where otherwise provided by law, officers and attachés of municipal courts in Los Angeles County shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Range/ Schedule
Account Clerk, M.C.	54K
Accountant, M.C.	68C
Accountant, M.C., NCS	68C
Accounting Officer II	79J
Accounting Technician, M.C.	57G
Accounting Technician, M.C., NCS	57G
Administrative Assistant, M.C.	N2 61E
Administrative Assistant, M.C., NCS	N2 61E
Administrative Clerk, Marshal	59C
Administrative Services Manager, M.C., NCS	90B
Assistant Capital Projects Manager, NCS, LAMC	87F
Assistant Chief Deputy Clerk, M.C.	80C
Assistant Chief Staff Attorney, Planning and Research	NW 98J
Assistant Chief, Systems Division, M.C., NCS	92J
Assistant Court Administrator LAMC, NCS	N23 R15
Assistant Court Administrator (1 judge court)	83C
Assistant Court Administrator (2 judge court)	84C
Assistant Court Administrator (3, 4, 5 judge court)	85C
Assistant Court Administrator (3, 4, 5 judge court) NCS	85C
Assistant Court Administrator (6 judge court)	86C
Assistant Court Administrator (7 judge court)	87C
Assistant Court Administrator (8 judge court)	88C
Assistant Court Administrator (9 judge court)	89C
Assistant Court Administrator (9 judge court), NCS	89C
Assistant Court Administrator (10, 11, 12 judge court)	90C
Assistant Division Chief, Operations	87F
Assistant Division Chief, Operations, NCS, LAMC	87F
Assistant Head, Fiscal & Administrative Services, Marshal	82K
Assistant Marshal	114C

Assistant Payroll Technician, M.C., NCS	56J
Capital Projects Manager, M.C., NCS	92J
Captain, Marshal	100H
Chief Deputy Clerk, M.C., NCS	79C
Chief Staff Attorney, Planning and Research	NX 102L
Chief, Systems Division, NCS, M.C.	98K
Clerical Aide, Municipal Court	37C
Clerical Aide, M.C., NCS	37C
Commander, Marshal	105B
Computer Equipment Operator, M.C.	54L
Computer Operations Supervisor, M.C.	77C
Computer Operations Supervisor, M.C., NCS	77C
Computer Systems Operator, M.C.	60G
Court Administrator (1 judge court)	91C
Court Administrator (2 judge court)	92C
Court Administrator (3, 4, 5 judge court)	93C
Court Administrator (6 judge court)	94C
Court Administrator (7 judge court)	95C
Court Administrator (8 judge court)	96C
Court Administrator (9 judge court)	97C
Court Administrator (10, 11, 12 judge court)	98C
Court Administrator, Los Angeles Municipal Court	N23 R18
Court Clerk, M.C.	NX 70H
Court Information Officer, M.C., NCS	86J
Court Manager, M.C., NCS	82B
Custodian M.C., NCS	46B
Data Control Clerk, M.C.	51E
Data Conversion Equipment Operator I, M.C.	53K
Data Conversion Supervisor I, M.C.	61A
Data Conversion Supervisor I, M.C., NCS	61A
Data Conversion Supervisor III, M.C.	69K
Data Conversion Supervisor III, M.C., NCS	69K
Data Processing Specialist I, M.C., NCS	95H
Data Systems Analyst Aide, M.C., NCS	68L
Data Systems Analyst I, M.C.	75F
Data Systems Analyst I, M.C., NCS	75F
Data Systems Analyst II, M.C.	78B
Data Systems Analyst II, M.C., NCS	78B
Data Systems Coordinator, M.C.	85E
Data Systems Coordinator, M.C., NCS	85E

Deputy Clerk I, Marshal	49E
Deputy Clerk II, Marshal	52H
Deputy Clerk III, Marshal	55D
Deputy Clerk III, M.C.	58C
Deputy Clerk III, M.C., NCS	58C
Deputy Clerk IV, M.C.	NX 69A
Deputy Clerk–Custody Officer, Marshal	59F
Deputy Clerk Supervisor, M.C., NCS	64G
Deputy Court Administrator, Administrative & Financial Services, LAMC,NCS	N23 R13
Deputy Court Administrator, Operations, LAMC, NCS	N23 R13
Deputy Marshal	75J
Deputy Marshal IV	79J
Deputy Marshal Matron	64H
Deputy Marshal Trainee	75J
Deputy Municipal Court Clerk I	N3 52D
Deputy Municipal Court Clerk I, NCS	N3 52D
Deputy Municipal Court Clerk II	55G
Deputy Municipal Court Clerk II, NCS	55G
Deputy Municipal Court Clerk Aide, NCS	FH $6.87
District Court Administrator (1 judge court), NCS	87C
District Court Administrator (3, 4, 5 judge court), NCS	89C
District Court Administrator (9 judge court), NCS	93C
Division Chief, M.C., NCS	84C
Division Chief, Long Beach, M.C.	84C
Division Chief, Operations, LAMC	96C
Division Chief, Operations, LAMC, NCS	96C
EDP Staff Aide, M.C.	60E
EDP Staff Aide, M.C., NCS	60E
EDP Support Analyst II, M.C., NCS	N2 78F
Executive Assistant, Presiding Judges Association	N4 78E
Executive Officer, Administratively Consolidated Municipal Courts,NCS	101G
Executive Secretary, M.C.	N3 80D
Executive Secretary, M.C., NCS	N3 80D
Executive Secretary, Marshal	N3 73F
Facilities Planning Assistant, M.C.	69H
Facilities Planning Assistant, M.C., NCS	69H

Facilities Services Assistant, M.C.	63H
Facilities Services Assistant, M.C., NCS	63H
Financial Evaluator, M.C., NCS	60E
Financial Evaluator Assistant, M.C., NCS	54E
General Maintenance Supervisor, M.C.	69C
General Maintenance Supervisor, M.C., NCS	69C
General Maintenance Worker, M.C.	59L
General Maintenance Worker, M.C., NCS	59L
Graphic Artist, M.C.	66F
Graphic Artist, M.C., NCS	66F
Head, Fiscal and Administrative Services, Marshal	89G
Head, Management Services, Planning and Research, NCS	83L
Head Personnel Technician, M.C., NCS	83C
Head Personnel Technician, Marshal	79G
Intermediate Accountant, M.C.	78H
Intermediate Accountant, M.C., NCS	78H
Interpreter	58L
Interpreter, M.C., NCS	58L
Judicial Management Intern, M.C., NCS	70J
Law Clerk, M.C.	76E
Legal Research Assistant, Planning and Research	FH $12.62
Legal Services Specialist, Marshal	57L
Lieutenant, Marshal	92H
Light Vehicle Driver, M.C., NCS	49F
Light Vehicle Driver, Marshal	46G
Management Secretary, M.C.	N3 70D
Management Secretary, M.C., NCS	N3 70D
Management Secretary II, M.C., NCS	N3 74D
Management Secretary, Marshal	N3 70F
Management Services Specialist, M.C., NCS	NCRT 63J
Managing Court Reporter, LAMC, NCS	89E
Marshal	117L
Marshal's Dispatcher I	58A
Marshal's Dispatcher II	64A
Municipal Court Clerk Trainee	F $2,343.49
Municipal Court Judicial Assistant, NCS	NX 70H
Municipal Court Judicial Assistant Trainee, NCS	F $2,343.49
Office Services Assistant I, M.C., NCS	N3 52D
Office Services Assistant II, M.C., NCS	55G

Office Services Assistant III, M.C., NCS	58C
Payroll Clerk, Marshal	54L
Payroll Technician, M.C., NCS	62J
Personnel Administrator, M.C., NCS	96C
Personnel Assistant, M.C.	58H
Personnel Assistant, M.C., NCS	58H
Personnel Assistant, Marshal	55J
Personnel Clerk, M.C.	56J
Personnel Clerk, M.C., NCS	56J
Personnel Technician, Marshal	75G
Personnel Technician, M.C.	79C
Personnel Technician, M.C., NCS	79C
Planning Analyst Aide, Planning and Research	N2 64H
Planning Analyst, Planning and Research	75A
Principal Administrative Assistant, M.C.	74J
Principal Administrative Assistant, M.C., NCS	74J
Principal Assistant, Fiscal Services, Marshal	78F
Principal Budget Analyst, Planning and Research	96C
Principal Clerk, M.C., NCS	75G
Principal Clerk, Los Angeles	75G
Principal Clerk, Marshal	61K
Principal Personnel Assistant, M.C.	75C
Principal Personnel Assistant, M.C., NCS	75C
Principal Programmer Analyst, M.C.	88F
Principal Programmer Analyst, M.C., NCS	88F
Procurement Aide, M.C.	58B
Procurement Aide, M.C., NCS	58B
Procurement Assistant I, M.C., NCS	62A
Procurement Assistant II, M.C.	66A
Procurement Assistant II, M.C., NCS	66A
Pro Tem Reporter	FD $237.45
Safety Officer, Marshal	75L
Secretary, Marshal	61E
Secretary, Muni Ct	62D
Secretary, M.C., NCS	62D
Secretary to Presiding Judge, M.C.	N3 82D
Secretary to Presiding Judge, M.C., NCS	N3 82D
Security Officer I, Marshal	F $1,492.97
Security Officer II, Marshal	55L
Senior Accountant, M.C.	81E

Senior Accountant, M.C., NCS	81E
Senior Administrative Assistant, M.C.	70J
Senior Administrative Assistant, M.C., NCS	70J
Senior Courtroom Clerk, M.C., NCS	79E
Senior Court Manager, M.C., NCS	87F
Senior Data Control Clerk, M.C.	55C
Senior Data Conversion Equipment Operator, M.C.	57K
Senior General Maintenance Worker, M.C., NCS	63L
Senior Judicial Secretary, Muni Ct	N3 69D
Senior Judicial Secretary, M.C., NCS	N3 69D
Senior Management Secretary, LAMC	N3 76D
Senior Management Secretary, M.C., NCS	N3 76D
Senior Payroll Clerk, Marshal	57L
Senior Personnel Assistant, M.C.	68E
Senior Personnel Assistant, M.C., NCS	68E
Senior Personnel Assistant, Marshal	64J
Senior Planning Analyst, Planning and Research	78E
Senior Programming and System Analyst, M.C.	82B
Senior Programming and System Analyst, M.C., NCS	82B
Senior Programmer Analyst, M.C.	83B
Senior Programmer Analyst, M.C., NCS	83B
Senior Secretary I, Muni Ct	64D
Senior Secretary I, M.C., NCS	64D
Senior Secretary II, Muni Ct	66D
Senior Secretary II, M.C., NCS	66D
Senior Secretary III, Muni Ct	N3 69D
Senior Secretary III, M.C., NCS	N3 69D
Senior Secretary, Marshal	65E
Senior Staff Assistant, Marshal	74G
Senior Systems Aide, M.C., NCS	66E
Senior Telecommunications Systems, Engineer, M.C., NCS	N4 91D
Sergeant, Marshal	86D
Staff Assistant, Marshal	64J
Staff Assistant, Muni Ct	62D
Staff Assistant, M.C., NCS	62D
Staff Attorney I, Planning and Research	N3 78E
Staff Attorney II, Planning and Research	NW 89J

Staff Attorney III, Planning and Research	NW 98J
Staff Development Specialist, Muni Ct	76B
Staff Development Specialist, M.C., NCS	76B
Statistical Analyst, M.C., NCS	64H
Stenographer, M.C.	N3Z 61B
Stenographer, M.C., NCS	N3Z 61B
Student Professional Worker	FH $8.30
Student Professional Worker, M.C., NCS	FH $8.30
Student Worker	FH $6.87
Student Worker, M.C., NCS	FH $6.87
Supervising Accountant, M.C., NCS	84G
Supervising Computer Operator, M.C.	67C
Supervising Computer Operator, M.C., NCS	67C
Supervising Deputy Clerk I, M.C.	62G
Supervising Deputy Clerk I, M.C., NCS	62G
Supervising Deputy Clerk II, M.C.	NX 71A
Supervising Deputy Clerk II, M.C., NCS	NX 71A
Supervising Law Clerk	78E
Supervising Law Clerk, M.C., NCS	78E
Supervising Payroll Clerk, Marshal	60L
Supervising Payroll Technician, M.C., NCS	70A
Supply and Reproduction Assistant, Marshal	51L
Supply and Reproduction Supervisor, Marshal	57L
Systems Aide, M.C., NCS	60E
Systems Programmer, M.C.	81B
Systems Programmer, M.C., NCS	81B
Telecommunications Technician, M.C.	68G
Telecommunications Technician, M.C., NCS	68G
Training Officer, M.C., NCS	84J
Volunteer	W/O Comp.
Warehouse Manager, M.C.	68D
Warehouse Manager, M.C., NCS	68D
Warehouse Worker I, Marshal	53J
Warehouse Worker I, M.C., NCS	56H
Warehouse Worker II, M.C.	60H
Warehouse Worker II, M.C., NCS	60H
Warehouse Worker Aide, M.C., NCS	54H

The term "schedule" as used in this section refers to the salary schedule of the Los Angeles County Code. The term "range" as used

in this section refers to the Management Appraisal and Performance Plan of Los Angeles County.

As defined in Section 6.28.030 of the Los Angeles County Code, the following prefixes are used instead of schedule numbers:

F—Flat rate per month.
FD—Flat rate per day.
FH—Flat rate per hour.

As defined in Section 6.28.040 of the Los Angeles County Code, the following abbreviations are used in conjunction with or instead of schedule or range numbers:

N—Note (refers to notes at end of Section 6.28.050).
W/O Comp.—Without compensation.

"R" or "A" used instead of a schedule number indicates a position's inclusion in the county's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the Los Angeles County Code.

The term "NCS" as used in the title of a class in this chapter refers to a non-civil service position. Personnel appointed to this class shall serve at the pleasure of the appointing authority and may at any time be removed by the appointing authority.

(b) This section shall be operative January 1, 1999, and shall remain in effect only until July 1, 1999, and as of that date is repealed.

SEC. 5.3. Section 72609 is added to the Government Code, to read:

72609. (a) Except where otherwise provided by law, officers and attachés of municipal courts in Los Angeles County shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Range/ Schedule
Account Clerk, M.C.	55G
Accountant, M.C.	68L
Accountant, M.C., NCS	68L
Accounting Officer II	80F
Accounting Technician, M.C.	58D
Accounting Technician, M.C., NCS	58D
Administrative Assistant, M.C.	N2 62B
Administrative Assistant, M.C., NCS	N2 62B
Administrative Clerk, Marshal	59C
Administrative Services Manager, M.C., NCS	90K

Assistant Capital Projects Manager, LAMC, NCS	88C
Assistant Chief Deputy Clerk, M.C.	80L
Assistant Chief Staff Attorney, Planning and Research	NW 99F
Assistant Chief, Systems Division, M.C., NCS	93F
Assistant Court Administrator LAMC, NCS	N23 R15
Assistant Court Administrator (1 judge court)	83L
Assistant Court Administrator (2 judge court)	84L
Assistant Court Administrator (3, 4, 5 judge court)	85L
Assistant Court Administrator (3, 4, 5 judge court) NCS	85L
Assistant Court Administrator (6 judge court)	86L
Assistant Court Administrator (7 judge court)	87L
Assistant Court Administrator (8 judge court)	88L
Assistant Court Administrator (9 judge court)	89L
Assistant Court Administrator (9 judge court), NCS	89L
Assistant Court Administrator (10, 11, 12 judge court)	90L
Assistant Division Chief, Operations	88C
Assistant Division Chief, Operations, LAMC, NCS	88C
Assistant Head, Fiscal & Administrative Services, Marshal	82K
Assistant Marshal	114C
Assistant Payroll Technician, M.C., NCS	57F
Capital Projects Manager, M.C., NCS	93F
Captain, Marshal	100H
Chief Deputy Clerk	79L
Chief Staff Attorney, Planning and Research	NX 103H
Chief, Systems Division, M.C., NCS	99G
Clerical Aide, Municipal Court	37L
Clerical Aide, M.C., NCS	37L
Commander, Marshal	105B
Computer Equipment Operator, M.C.	55H
Computer Operations Supervisor, M.C.	77L
Computer Operations Supervisor, M.C., NCS	77L
Computer Systems Operator, M.C.	61D
Court Administrator (1 judge court)	91L
Court Administrator (2 judge court)	92L
Court Administrator (3, 4, 5 judge court)	93L

Court Administrator (6 judge court)	94L
Court Administrator (7 judge court)	95L
Court Administrator (8 judge court)	96L
Court Administrator (9 judge court)	97L
Court Administrator (10, 11, 12 judge court)	98L
Court Administrator, Los Angeles Municipal Court	N23 R18
Court Clerk, M.C.	NX 71E
Court Information Officer, M.C., NCS	87F
Court Manager, M.C., NCS	82K
Custodian M.C., NCS	46K
Data Control Clerk, M.C.	52B
Data Conversion Equipment Operator I, M.C.	54G
Data Conversion Supervisor I, M.C.	61J
Data Conversion Supervisor I, M.C., NCS	61J
Data Conversion Supervisor III, M.C.	70G
Data Conversion Supervisor III, M.C., NCS	70G
Data Processing Specialist I, M.C., NCS	96E
Data Systems Analyst Aide, M.C., NCS	69H
Data Systems Analyst I, M.C.	76C
Data Systems Analyst I, M.C., NCS	76C
Data Systems Analyst II, M.C.	78K
Data Systems Analyst II, M.C., NCS	78K
Data Systems Coordinator, M.C.	86B
Data Systems Coordinator, M.C., NCS	86B
Deputy Clerk I, Marshal	49E
Deputy Clerk II, Marshal	52H
Deputy Clerk III, Marshal	55D
Deputy Clerk III, M.C.	58L
Deputy Clerk III, M.C., NCS	58L
Deputy Clerk IV, M.C.	NX 69J
Deputy Clerk-Custody Officer, Marshal	59F
Deputy Clerk Supervisor, M.C., NCS	65D
Deputy Court Administrator, Administrative & Financial Services, LAMC, NCS	N23 R13
Deputy Court Administrator, Operations, LAMC, NCS	N23 R13
Deputy Marshal	75J
Deputy Marshal IV	79J
Deputy Marshal Matron	64H
Deputy Marshal Trainee	75J
Deputy Municipal Court Clerk I	N3 53A

Deputy Municipal Court Clerk I, NCS	N3 53A
Deputy Municipal Court Clerk II	56D
Deputy Municipal Court Clerk II, NCS	56D
Deputy Municipal Court Clerk Aide, NCS	FH $7.01
District Court Administrator (1 judge court), NCS	87L
District Court Administrator (3, 4, 5 judge court), NCS	89L
District Court Administrator (9 judge court), NCS	93L
Division Chief, M.C., NCS	84L
Division Chief, Long Beach, M.C.	84L
Division Chief, Operations, LAMC	96L
Division Chief, Operations, LAMC, NCS	96L
EDP Staff Aide, M.C.	61B
EDP Staff Aide, M.C., NCS	61B
EDP Support Analyst II, M.C., NCS	N2 79C
Executive Assistant to Presiding Judges Association	N4 79B
Executive Officer, Administratively Consolidated Municipal Courts, NCS	102D
Executive Secretary, M.C.	N3 81A
Executive Secretary, M.C., NCS	N3 81A
Executive Secretary, Marshal	N3 73F
Facilities Planning Assistant, M.C.	70E
Facilities Planning Assistant, M.C., NCS	70E
Facilities Services Assistant, M.C.	64E
Facilities Services Assistant, M.C., NCS	64E
Financial Evaluator, M.C., NCS	61B
Financial Evaluator Assistant, M.C., NCS	55B
General Maintenance Supervisor, M.C.	69L
General Maintenance Supervisor, M.C., NCS	69L
General Maintenance Worker, M.C.	60H
General Maintenance Worker, M.C., NCS	60H
Graphic Artist, M.C.	67C
Graphic Artist, M.C., NCS	67C
Head, Fiscal and Administrative Services, Marshal	89G
Head, Management Services, Planning and Research, NCS	84H
Head Personnel Technician, M.C., NCS	83L
Head Personnel Technician, Marshal	79G

Intermediate Accountant, M.C.	79E
Intermediate Accountant, M.C., NCS	79E
Interpreter	59H
Interpreter, M.C., NCS	59H
Judicial Management Intern, M.C., NCS	71F
Law Clerk, M.C.	77B
Legal Research Assistant, Planning and Research	FH $12.87
Legal Services Specialist, Marshal	57L
Lieutenant, Marshal	92H
Light Vehicle Driver, M.C., NCS	49F
Light Vehicle Driver, Marshal	46G
Management Secretary, M.C.	N3 71A
Management Secretary, M.C., NCS	N3 71A
Management Secretary II, M.C., NCS	N3 75A
Management Secretary, Marshal	N3 70F
Management Services Specialist, M.C., NCS	NCRT 64F
Managing Court Reporter, LAMC, NCS	90B
Marshal	117L
Marshal's Dispatcher I	58A
Marshal's Dispatcher II	64A
Municipal Court Clerk Trainee	F $2,390.36
Municipal Court Judicial Assistant, NCS	NX 71E
Municipal Court Judicial Assistant Trainee, NCS	F $2,390.36
Office Services Assistant I, M.C., NCS	N3 53A
Office Services Assistant II, M.C., NCS	56D
Office Services Assistant III, M.C., NCS	58L
Payroll Clerk, Marshal	54L
Payroll Technician, M.C., NCS	63F
Personnel Administrator, M.C., NCS	96L
Personnel Assistant, M.C.	59E
Personnel Assistant, M.C., NCS	59E
Personnel Assistant, Marshal	55J
Personnel Clerk, M.C.	57F
Personnel Clerk, M.C., NCS	57F
Personnel Technician, Marshal	75G
Personnel Technician, M.C.	79L
Personnel Technician, M.C., NCS	79L
Planning Analyst Aide, Planning and Research	N2 65E
Planning Analyst, Planning and Research	75J
Principal Administrative Assistant, M.C.	75F
Principal Administrative Assistant, M.C., NCS	75F
Principal Assistant, Fiscal Services, Marshal	78F

Principal Budget Analyst, Planning and Research	96L
Principal Clerk, Los Angeles	76D
Principal Clerk, M.C., NCS	76D
Principal Clerk, Marshal	61K
Principal Personnel Assistant, M.C.	75L
Principal Personnel Assistant, M.C., NCS	75L
Principal Programmer Analyst, M.C.	89C
Principal Programmer Analyst, M.C., NCS	89C
Procurement Aide, M.C.	58K
Procurement Aide, M.C., NCS	58K
Procurement Assistant I, M.C., NCS	62J
Procurement Assistant II, M.C.	66J
Procurement Assistant II, M.C., NCS	66J
Pro Tem Reporter	FD $242.20
Safety Officer, Marshal	75L
Secretary, Marshal	61E
Secretary, Muni Ct	63A
Secretary, M.C., NCS	63A
Secretary to Presiding Judge, M.C.	N3 83A
Secretary to Presiding Judge, M.C., NCS	N3 83A
Security Officer I, Marshal	F $1,492.97
Security Officer II, Marshal	55L
Senior Accountant, M.C.	82B
Senior Accountant, M.C., NCS	82B
Senior Administrative Assistant, M.C.	71F
Senior Administrative Assistant, M.C., NCS	71F
Senior Courtroom Clerk, M.C., NCS	80B
Senior Court Manager, M.C., NCS	88C
Senior Data Control Clerk, M.C.	55L
Senior Data Conversion Equipment Operator, M.C.	58G
Senior General Maintenance Worker, M.C., NCS	64H
Senior Judicial Secretary, Muni Ct	N3 70A
Senior Judicial Secretary, M.C., NCS	N3 70A
Senior Management Secretary, LAMC	N3 77A
Senior Management Secretary, M.C., NCS	N3 77A
Senior Payroll Clerk, Marshal	57L
Senior Personnel Assistant, M.C.	69B
Senior Personnel Assistant, M.C., NCS	69B
Senior Personnel Assistant, Marshal	64J
Senior Planning Analyst, Planning and Research	79B
Senior Programming and System Analyst, M.C.	82K

Senior Programming and System Analyst, M.C., NCS	82K
Senior Programmer Analyst, M.C.	83K
Senior Programmer Analyst, M.C., NCS	83K
Senior Secretary I, Muni Ct	65A
Senior Secretary I, M.C., NCS	65A
Senior Secretary II, Muni Ct	67A
Senior Secretary II, M.C., NCS	67A
Senior Secretary III, Muni Ct	N3 70A
Senior Secretary III, M.C., NCS	N3 70A
Senior Secretary, Marshal	65E
Senior Staff Assistant, Marshal	74G
Senior Systems Aide, M.C., NCS	67B
Senior Telecommunications Systems, Engineer, M.C., NCS	N4 92A
Sergeant, Marshal	86D
Staff Assistant, Marshal	64J
Staff Assistant, Muni Ct	63A
Staff Assistant, M.C., NCS	63A
Staff Attorney I, Planning and Research	N3 79B
Staff Attorney II, Planning and Research	NW 90F
Staff Attorney III, Planning and Research	NW 99F
Staff Development Specialist, Muni Ct	76K
Staff Development Specialist, M.C., NCS	76K
Statistical Analyst, M.C., NCS	65E
Stenographer, M.C.	N3Z 61K
Stenographer, M.C., NCS	N3Z 61K
Student Professional Worker	FH $8.47
Student Professional Worker, M.C., NCS	FH $8.47
Student Worker	FH $7.01
Student Worker, M.C., NCS	FH $7.01
Supervising Accountant, M.C., NCS	85D
Supervising Computer Operator, M.C.	67L
Supervising Computer Operator, M.C., NCS	67L
Supervising Deputy Clerk I, M.C.	63D
Supervising Deputy Clerk I, M.C., NCS	63D
Supervising Deputy Clerk II, M.C.	NX 71J
Supervising Deputy Clerk II, M.C., NCS	NX 71J
Supervising Law Clerk	79B
Supervising Law Clerk, M.C., NCS	79B
Supervising Payroll Clerk, Marshal	60L
Supervising Payroll Technician, M.C., NCS	70J

Supply and Reproduction Assistant, Marshal	51L
Supply and Reproduction Supervisor, Marshal	57L
Systems Aide, M.C., NCS	61B
Systems Programmer, M.C.	81K
Systems Programmer, M.C., NCS	81K
Telecommunications Technician, M.C.	69D
Telecommunications Technician, M.C., NCS	69D
Training Officer, M.C., NCS	85F
Volunteer	W/O Comp.
Warehouse Manager, M.C.	69A
Warehouse Manager, M.C., NCS	69A
Warehouse Worker I, Marshal	53J
Warehouse Worker I, M.C., NCS	57E
Warehouse Worker II, M.C.	61E
Warehouse Worker II, M.C., NCS	61E
Warehouse Worker Aide, M.C., NCS	55E

The term "schedule" as used in this section refers to the salary schedule of the Los Angeles County Code. The term "range" as used in this section refers to the Management Appraisal and Performance Plan of Los Angeles County.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F—Flat rate per month.
FD—Flat rate per day.
FH—Flat rate per hour.

As defined in the Los Angeles County Code, Section 6.28.040, the following abbreviations are used in conjunction with or instead of schedule or range numbers:

N—Note (refers to notes at end of Section 6.28.050).
W/O Comp.—Without compensation.

"R" or "A" used instead of a schedule number indicates a position's inclusion in the county's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the Los Angeles County Code.

The term "NCS" as used in the title of a class in this chapter refers to a non-civil-service position. Personnel appointed to this class shall serve at the pleasure of the appointing authority and may at any time be removed by the appointing authority.

(b) This section shall be operative July 1, 1999, and shall remain in effect only until January 1, 2000.

SEC. 5.4. Section 72609 is added to the Government Code, to read:

72609. (a) Except where otherwise provided by law, officers and attachés of municipal courts in Los Angeles County shall receive a monthly salary at a rate specified in the Los Angeles County Code as follows:

Title	Range/ Schedule
Account Clerk, M.C.	56D
Accountant, M.C.	69H
Accountant, M.C., NCS	69H
Accounting Officer II	81C
Accounting Technician, M.C.	59A
Accounting Technician, M.C., NCS	59A
Administrative Assistant, M.C.	N2 62K
Administrative Assistant, M.C., NCS	N2 62K
Administrative Clerk, Marshal	59C
Administrative Services Manager, M.C., NCS	91G
Assistant Capital Projects Manager, NCS, LAMC	88L
Assistant Chief Deputy Clerk, M.C.	81H
Assistant Chief Staff Attorney, Planning and Research	NW 100C
Assistant Chief, Systems Division, M.C., NCS	94C
Assistant Court Administrator LAMC	N23 R15
Assistant Court Administrator (1 judge court)	84H
Assistant Court Administrator (2 judge court)	85H
Assistant Court Administrator (3, 4, 5 judge court)	86H
Assistant Court Administrator (3, 4, 5 judge court) NCS	86H
Assistant Court Administrator (6 judge court)	87H
Assistant Court Administrator (7 judge court)	88H
Assistant Court Administrator (8 judge court)	89H
Assistant Court Administrator (9 judge court)	90H
Assistant Court Administrator (9 judge court), NCS	90H
Assistant Court Administrator (10, 11, 12 judge court)	91H
Assistant Division Chief, Operations	88L
Assistant Division Chief, Operations, NCS, LAMC	88L

Assistant Head, Fiscal & Administrative Services, Marshal	82K
Assistant Marshal	114C
Assistant Payroll Technician, M.C., NCS	58C
Capital Projects Manager, M.C., NCS	94C
Captain, Marshal	100H
Chief Deputy Clerk, M.C., NCS	80H
Chief Staff Attorney, Planning and Research	NX 104E
Chief, Systems Division, NCS, M.C.	100D
Clerical Aide, Municipal Court	38H
Clerical Aide, M.C., NCS	38H
Commander, Marshal	105B
Computer Equipment Operator, M.C.	56E
Computer Operations Supervisor, M.C.	78H
Computer Operations Supervisor, M.C., NCS	78H
Computer Systems Operator, M.C.	62A
Court Administrator (1 judge court)	92H
Court Administrator (2 judge court)	93H
Court Administrator (3, 4, 5 judge court)	94H
Court Administrator (6 judge court)	95H
Court Administrator (7 judge court)	96H
Court Administrator (8 judge court)	97H
Court Administrator (9 judge court)	98H
Court Administrator (10, 11, 12 judge court)	99H
Court Administrator, Los Angeles Municipal Court	N23 R18
Court Clerk, M.C.	NX 72B
Court Information Officer, M.C., NCS	88C
Court Manager, M.C., NCS	83G
Custodian M.C., NCS	47G
Data Control Clerk, M.C.	52K
Data Conversion Equipment Operator I, M.C.	55D
Data Conversion Supervisor I, M.C.	62F
Data Conversion Supervisor I, M.C., NCS	62F
Data Conversion Supervisor III, M.C.	71D
Data Conversion Supervisor III, M.C., NCS	71D
Data Processing Specialist I, M.C., NCS	97B
Data Systems Analyst Aide, M.C., NCS	70E
Data Systems Analyst I, M.C.	76L
Data Systems Analyst I, M.C., NCS	76L
Data Systems Analyst II, M.C.	79G
Data Systems Analyst II, M.C., NCS	79G

Data Systems Coordinator, M.C.	86K
Data Systems Coordinator, M.C., NCS	86K
Deputy Clerk I, Marshal	49E
Deputy Clerk II, Marshal	52H
Deputy Clerk III, Marshal	55D
Deputy Clerk III, M.C.	59H
Deputy Clerk III, M.C., NCS	59H
Deputy Clerk IV, M.C.	NX 70F
Deputy Clerk-Custody Officer, Marshal	59F
Deputy Clerk Supervisor, M.C., NCS	66A
Deputy Court Administrator, Administrative & Financial Services, LAMC, NCS	N23 R13
Deputy Court Administrator, Operations, LAMC, NCS	N23 R13
Deputy Marshal	75J
Deputy Marshal IV	79J
Deputy Marshal Matron	64H
Deputy Marshal Trainee	75J
Deputy Municipal Court Clerk I	N3 53J
Deputy Municipal Court Clerk I, NCS	N3 53J
Deputy Municipal Court Clerk II	57A
Deputy Municipal Court Clerk II, NCS	57A
Deputy Municipal Court Clerk Aide, NCS	FH $7.15
District Court Administrator (1 judge court), NCS	88H
District Court Administrator (3, 4, 5 judge court), NCS	90H
District Court Administrator (9 judge court), NCS	94H
Division Chief, NCS, M.C.	85H
Division Chief, Long Beach, M.C.	85H
Division Chief, Operations, LAMC	97H
Division Chief, Operations, NCS, LAMC	97H
EDP Staff Aide, M.C.	61K
EDP Staff Aide, M.C., NCS	61K
EDP Support Analyst II, M.C., NCS	N2 79L
Executive Assistant, Presiding Judges Association	N4 79K
Executive Officer, Administratively Consolidated Municipal Courts, NCS	103A
Executive Secretary, M.C.	N3 81J
Executive Secretary, M.C., NCS	N3 81J
Executive Secretary, Marshal	N3 73F

Facilities Planning Assistant, M.C.	71B
Facilities Planning Assistant, M.C., NCS	71B
Facilities Services Assistant, M.C.	65B
Facilities Services Assistant, M.C., NCS	65B
Financial Evaluator, M.C., NCS	61K
Financial Evaluator Assistant, M.C., NCS	55K
General Maintenance Supervisor, M.C.	70H
General Maintenance Supervisor, M.C., NCS	70H
General Maintenance Worker, M.C.	61E
General Maintenance Worker, M.C., NCS	61E
Graphic Artist, M.C.	67L
Graphic Artist, M.C., NCS	67L
Head, Fiscal and Administrative Services, Marshal	89G
Head, Management Services, Planning and Research, NCS	85E
Head Personnel Technician, M.C., NCS	84H
Head Personnel Technician, Marshal	79G
Intermediate Accountant, M.C.	80B
Intermediate Accountant, M.C., NCS	80B
Interpreter	60E
Interpreter, M.C., NCS	60E
Judicial Management Intern, M.C., NCS	72C
Law Clerk, M.C.	77K
Legal Research Assistant, Planning and Research	FH $13.13
Legal Services Specialist, Marshal	57L
Lieutenant, Marshal	92H
Light Vehicle Driver, M.C., NCS	50C
Light Vehicle Driver, Marshal	46G
Management Secretary, M.C.	N3 71J
Management Secretary, M.C., NCS	N3 71J
Management Secretary II, M.C., NCS	N3 75J
Management Secretary, Marshal	N3 70F
Management Services Specialist, M.C., NCS	NCRT 65C
Managing Court Reporter, NCS, LAMC	90K
Marshal	117L
Marshal's Dispatcher I	58A
Marshal's Dispatcher II	64A
Municipal Court Clerk Trainee	F $2438.17
Municipal Court Judicial Assistant, NCS	NX 72B
Municipal Court Judicial Assistant Trainee, NCS	F $2438.17
Office Services Assistant I, M.C., NCS	N3 53J

Office Services Assistant II, M.C., NCS	57A
Office Services Assistant III, M.C., NCS	59H
Payroll Clerk, Marshal	54L
Payroll Technician, M.C., NCS	64C
Personnel Administrator, NCS, M.C.	97H
Personnel Assistant, M.C.	60B
Personnel Assistant, M.C., NCS	60B
Personnel Assistant, Marshal	55J
Personnel Clerk, M.C.	58C
Personnel Clerk, M.C., NCS	58C
Personnel Technician, Marshal	75G
Personnel Technician, M.C.	80H
Personnel Technician, M.C., NCS	80H
Planning Analyst Aide, Planning and Research	N2 66B
Planning Analyst, Planning and Research	76F
Principal Administrative Assistant, M.C.	76C
Principal Administrative Assistant, M.C., NCS	76C
Principal Assistant, Fiscal Services, Marshal	78F
Principal Budget Analyst, Planning and Research	97H
Principal Clerk, Los Angeles	77A
Principal Clerk, M.C., NCS	77A
Principal Clerk, Marshal	61K
Principal Personnel Assistant, M.C.	76H
Principal Personnel Assistant, M.C., NCS	76H
Principal Programmer Analyst, M.C.	89L
Principal Programmer Analyst, M.C., NCS	89L
Procurement Aide, M.C.	59G
Procurement Aide, M.C., NCS	59G
Procurement Assistant I, M.C., NCS	63F
Procurement Assistant II, M.C.	67F
Procurement Assistant II, M.C., NCS	67F
Pro Tem Reporter	FD $247.04
Safety Officer, Marshal	75L
Secretary, Marshal	61E
Secretary, Muni Ct	63J
Secretary, M.C., NCS	63J
Secretary to Presiding Judge, M.C.	N3 83J
Secretary to Presiding Judge, M.C., NCS	N3 83J
Security Officer I, Marshal	F $1492.97
Security Officer II, Marshal	55L
Senior Accountant, M.C.	82K
Senior Accountant, M.C., NCS	82K

Senior Administrative Assistant, M.C.	72C
Senior Administrative Assistant, M.C., NCS	72C
Senior Courtroom Clerk, M.C., NCS	80K
Senior Court Manager, M.C., NCS	88L
Senior Data Control Clerk, M.C.	56H
Senior Data Conversion Equipment Operator, M.C.	59D
Senior General Maintenance Worker, M.C., NCS	65E
Senior Judicial Secretary, Muni Ct	N3 70J
Senior Judicial Secretary, M.C., NCS	N3 70J
Senior Management Secretary, LAMC	N3 77J
Senior Management Secretary, M.C., NCS	N3 77J
Senior Payroll Clerk, Marshal	57L
Senior Personnel Assistant, M.C.	69K
Senior Personnel Assistant, M.C., NCS	69K
Senior Personnel Assistant, Marshal	64J
Senior Planning Analyst, Planning and Research	79K
Senior Programming and System Analyst, M.C.	83G
Senior Programming and System Analyst, NCS, M.C.	83G
Senior Programmer Analyst, M.C.	84G
Senior Programmer Analyst, M.C., NCS	84G
Senior Secretary I, M.C.	65J
Senior Secretary I, M.C., NCS	65J
Senior Secretary II, Muni Ct	67J
Senior Secretary II, M.C., NCS	67J
Senior Secretary III, Muni Ct	N3 70J
Senior Secretary III, M.C., NCS	N3 70J
Senior Secretary, Marshal	65E
Senior Staff Assistant, Marshal	74G
Senior Systems Aide, M.C., NCS	67K
Senior Telecommunications Systems, Engineer, M.C., NCS	92J
Sergeant, Marshal	86D
Staff Assistant, Marshal	64J
Staff Assistant, Muni Ct	63J
Staff Assistant, M.C., NCS	63J
Staff Attorney I, Planning and Research	N3 79K
Staff Attorney II, Planning and Research	NW 91C
Staff Attorney III, Planning and Research	NW 100C
Staff Development Specialist, Muni Ct	77G
Staff Development Specialist, M.C., NCS	77G

Statistical Analyst, M.C., NCS	66B
Stenographer, M.C.	N3Z 62G
Stenographer, M.C., NCS	N3Z 62G
Student Professional Worker	FH $8.64
Student Professional Worker, M.C., NCS	FH $8.64
Student Worker	FH $7.15
Student Worker, M.C., NCS	FH $7.15
Supervising Accountant, M.C., NCS	86A
Supervising Computer Operator, M.C.	68H
Supervising Computer Operator, M.C., NCS	68H
Supervising Deputy Clerk I, M.C.	64A
Supervising Deputy Clerk I, M.C., NCS	64A
Supervising Deputy Clerk II, M.C.	NX 72F
Supervising Deputy Clerk II, M.C., NCS	NX 72F
Supervising Law Clerk	79K
Supervising Law Clerk, M.C., NCS	79K
Supervising Payroll Clerk, Marshal	60L
Supervising Payroll Technician, M.C., NCS	71F
Supply and Reproduction Assistant, Marshal	51L
Supply and Reproduction Supervisor, Marshal	57L
Systems Aide, M.C., NCS	61K
Systems Programmer, M.C.	82G
Systems Programmer, M.C., NCS	82G
Telecommunications Technician, M.C.	70A
Telecommunications Technician, M.C., NCS	70A
Training Officer, NCS, M.C.	86C
Volunteer	W/O Comp.
Warehouse Manager, M.C.	69J
Warehouse Manager, M.C., NCS	69J
Warehouse Worker I, Marshal	53J
Warehouse Worker I, M.C., NCS	58B
Warehouse Worker II, M.C.	62B
Warehouse Worker II, M.C., NCS	62B
Warehouse Worker Aide, M.C., NCS	56B

The term "schedule" as used in this section refers to the salary schedule of the Los Angeles County Code. The term "range" as used in this section refers to the Management Appraisal and Performance Plan of Los Angeles County.

As defined in the Los Angeles County Code, Section 6.28.030, the following prefixes are used instead of schedule numbers:

F — Flat rate per month.

FD — Flat rate per day.

FH — Flat rate per hour.

As defined in the Los Angeles County Code, Section 6.28.040, the following abbreviations are used in conjunction with or instead of schedule or range numbers:

N — Note (refers to Notes at end of Section 6.28.050).

W/O Comp. — Without compensation.

"R" or "A" used instead of a schedule number indicates a position's inclusion in the county's Management Appraisal and Performance Plan. The grade number following the "R" or "A" designation indicates the salary range. Compensation of these positions is in accordance with Sections 6.08.300 to 6.08.380, inclusive, of the Los Angeles County Code.

The term "NCS" as used in the title of a class in this chapter refers to a non-civil-service position. Personnel appointed to this class shall serve at the pleasure of the appointing authority and may at any time be removed by the appointing authority.

(b) This section shall become operative on January 1, 2000. In addition to the salary adjustments, otherwise, provided by this section, all persons employed in the following classifications shall receive a salary as listed below, effective July 1, 2000, which shall remain in effect only until January 1, 2001:

Title	Range/ Schedule
Court Clerk, M.C.	NX 72K
Deputy Clerk, IV, M.C.	NX 71C
Interpreter	61B
Interpreter, M.C., NCS	61B
Law Clerk, M.C.	78G
Managing Court Reporter, NCS, LAMC	91G
Municipal Court Judicial Assistant, NCS	NX 72K
Principal Clerk, Los Angeles	77J
Principal Clerk, M.C., NCS	77J
Pro Tem Reporter	FD $251.98
Senior Courtroom Clerk, M.C., NCS	81G
Supervising Deputy Clerk II, M.C.	NX 73C
Supervising Deputy Clerk II, M.C., NCS	NX 73C
Supervising Law Clerk	80G
Supervising Law Clerk, M.C., NCS	80G

(c) In addition to the salary adjustments otherwise provided by this section, all persons employed in the following classifications shall receive a salary as listed, effective January 1, 2001:

Title	Range/ Schedule
Court Clerk, M.C.	NX 73G
Deputy Clerk IV, M.C.	NX 71L
Interpreter	61K
Interpreter, M.C., NCS	61K
Law Clerk, M.C.	79D
Managing Court Reporter, NCS, LAMC	92D
Municipal Court Judicial Assistant, NCS	NX 73G
Principal Clerk, Los Angeles	78F
Principal Clerk, M.C., NCS	78F
Pro Tem Reporter	FD $257.02
Senior Courtroom Clerk, M.C., NCS	82D
Supervising Deputy Clerk II, M.C.	NX 73L
Supervising Deputy Clerk II, M.C., NCS	NX 73L
Supervising Law Clerk	81D
Supervising Law Clerk, M.C., NCS	81D

SEC. 5.5. Section 72627.5 of the Government Code is amended to read:

72627.5. (a) The chief staff attorney, planning and research, municipal courts, may appoint:

(1) Two assistant chief staff attorneys, planning and research.

(2) Three staff attorneys III, planning and research.

(3) Four staff attorneys II, planning and research.

(4) One senior programmer analyst, M.C.

(5) One principal budget analyst, planning and research.

(6) One staff assistant, M.C.

(7) One senior secretary III, M.C., who shall receive a monthly salary at the rate specified for senior judicial secretary.

(8) One senior secretary II, M.C.

(9) One stenographer, M.C.

(10) Four legal research assistants, planning and research.

(11) Three planning analyst aides, planning and research.

(12) One planning analyst, planning and research.

(13) Two senior planning analysts, planning and research.

(14) One data systems analyst I, M.C.

(15) Two data systems analysts II, M.C.

(16) One head of management services, planning and research, NCS.

(17) Three principal program analysts.

(18) Three law clerks, M.C.

(19) Four student professional workers.

(b) The positions appointed pursuant to this section shall not be deemed civil service positions. Each person appointed to these positions shall serve at the pleasure of the chief staff attorney.

SEC. 5.6. Section 72762 of the Government Code is amended to read:

72762. In the Alhambra Municipal Court District, the officers and attachés shall be appointed as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court.

(b) The clerk may appoint:

(1) One deputy municipal court clerk I.

(2) Fourteen deputy municipal court clerks II.

(3) Six deputy clerks III, M.C.

(4) Four court clerks, M.C.

(5) Three supervising deputy clerks I, M.C.

(6) Three supervising deputy clerks II, M.C.

(7) Four student workers.

(8) One student professional worker.

(9) One accountant, M.C.

(10) One EDP programmer analyst II.

(11) One judicial secretary.

(12) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of the court.

(c) The court administrator shall hold office at the pleasure of the judges of that court. This subdivision applies to vacancies occurring on or after January 1, 1991.

SEC. 5.8. Section 72776 of the Government Code is amended to read:

72776. In the Newhall Municipal Court District, the officers and attachés shall be appointed, as follows:

(a) There is one court administrator who shall be the clerk appointed by the judges of the court and who, for any vacancy occurring on or after January 1, 1991, shall hold office at the pleasure of the judges of that court.

(b) The clerk may appoint:

(1) Two deputy municipal court clerks I.

(2) Twelve deputy municipal court clerks II.

(3) Six deputy clerks III, M.C.

(4) Five court clerks, M.C., plus one additional court clerk, M.C. for each commissioner or traffic referee appointed pursuant to Section 72400, 72450, or 72607.

(5) One accounting technician, M.C.

(6) One senior secretary III, M.C.

(7) One supervising deputy clerk II, M.C.

(8) One data systems analyst I, M.C.

(9) One administrative assistant, M.C.

(10) Two student workers.

(11) One assistant court administrator who shall receive a monthly salary eight schedules less than the schedule specified for the court administrator of that court.

SEC. 6. Article 1.5 (commencing with Section 73330) is added to Chapter 10 of Title 8 of the Government Code, to read:

Article 1.5. Calaveras County

73330. The judges of Calaveras County have approved the coordination and consolidation of the municipal and superior courts administratively and judicially to meet the requirements of California Rule of Court 991.

All matters affecting the employment of staff of the consolidated courts that are not specifically determined by this article or another provision of state law shall be governed by the personnel ordinance and resolutions of the County of Calaveras. Employees currently governed by the terms and conditions of the current Memorandum of Understanding between the County of Calaveras and the Calaveras County Employees Association shall continue to be covered by the agreement until amended or superseded by mutual agreement.

There shall be one clerk of the court and jury commissioner for the Calaveras County Consolidated Courts, who shall be the court executive officer and receive an annual salary set by the court, as provided for in Section 69898.

The Calaveras County Consolidated Courts are judicially and administratively consolidated with joint job classifications and the work of the Superior and Municipal Courts in Calaveras County is to be performed, minimally, by each of the positions herein identified by the trial courts of Calaveras County. The court executive officer, with the approval of the judges, may appoint the following authorized titles, number of positions, and compensation rates for employees of the Calaveras County consolidated courts:

No. of Positions	Position Title	Range
2	Supervising Court Clerks	1037
3	Court Clerk I/II	0631
6	Court Clerk I/II	0782
3	Legal Process Clerk I/II	0782
1	Account Clerk I/II	0558
2	Account Clerk I/II	0630

The court executive officer may also appoint other employees, with the approval of the board of supervisors, upon the recommendation of the courts, and those employees shall receive a salary recommended by the courts and approved by the board of supervisors.

The salaries associated with the ranges listed above are available in the office of the Auditor-Controller of Calaveras County.

SEC. 7. Section 73348 of the Government Code is amended to read:

73348. (a) In Contra Costa County, the annual salary of each regular official reporter shall be based on a four-step salary plan with one-year increments. Effective October 1, 1997, the four salary steps are as follows:

Step 1. Forty-nine thousand five hundred twelve dollars ($49,512).

Step 2. Fifty-one thousand nine hundred eighty-four dollars ($51,984).

Step 3. Fifty-four thousand five hundred eighty-eight dollars ($54,588).

Step 4. Fifty-seven thousand three hundred twelve dollars ($57,312).

The step of entry to the above schedule shall be Step 1. However, the judges of the court may appoint a court reporter to a duly allocated exempt position at a higher step if, in the opinion of the appointing judge, an individual to be appointed has the experience and qualifications to entitle that individual to the higher initial step, and if the higher initial salary has the approval of the presiding judge of the court and the board of supervisors, but in no case may the initial salary be above the third step of the salary range. Except as provided below, official reporters shall advance to the next higher step on the salary plan annually. The compensation of each official reporter pro tempore shall be an amount which is equivalent to 1.05 times the daily wage of the fourth step in the salary range for full-time official reporters in Contra Costa County for each day the reporter actually is on duty under order of the court which per diem rate shall apply when an official reporter is appointed pursuant to Section 869 of the Penal Code.

Irrespective of the step of the salary range to which initially appointed, an official court reporter shall be eligible for advancement to the next higher step in the salary range after six months' service, and thereafter shall advance on the salary range based on annual reviews.

(b) During the hours which the court is open for the transaction of judicial business, the regular official reporter shall perform the duties required by law. When not engaged in the performance of any other duty imposed upon him or her by law, he or she shall render stenographic or clerical assistance to the judge of the court to which he or she is assigned as the judge may direct.

(c) The board of supervisors shall adjust the salary of regular official reporters as part of its regular review of county employee compensation. The adjustment shall be to that salary level closest to the average percentage adjustment in basic salaries of the county classes of superior court clerk, legal clerk, secretary, and clerk (experienced level). The reporter salary adjustment shall be effective on the same day as the effective date of the board's action

as to all of the aforesaid county classifications, but for official reporters of each municipal court district shall be effective only until January 1 of the second year following the calendar year in which the adjustment is made. The compensation of each official reporter pro tempore shall remain at the rate specified in subdivision (a) for the days he or she actually is on duty until changed by the board of supervisors at the same time and on the same basis as regular official reporters.

SEC. 7.2. Section 73349 of the Government Code is amended to read:

73349. Except as otherwise provided in this article, all paid employments of any municipal court now established or which may subsequently be established in Contra Costa County shall be under the merit system established in the county or the exempt system established by court personnel rules. The merit board of the county shall exercise the same jurisdiction over municipal court employments as it exercises over other county employments in the same manner as they apply to other merit system employments in the Contra Costa County service. In addition, all paid employments of any municipal court shall be subject to all provisions of the County Personnel Management Regulations and of the County Salary Regulations except as otherwise may be provided in this article.

In the event that one or more eligibles are not certified to a vacancy within six months of the date the position became vacant, or of the date of receipt of an examination request, whichever is later, the appointing authority may fill the vacancy by appointing any candidate who meets the minimum qualifications for the class as set forth in the class specification. The appointee shall thereby obtain merit system status as described above.

SEC. 7.5. Section 73351 of the Government Code is amended to read:

73351. There are the following classes of positions into which each of the positions of the municipal courts shall be assigned as prescribed in the section pertaining to each court:

(a) Deputy clerk-beginning level, which shall include all municipal court employments assigned routine clerical tasks under continuous immediate supervision.

(b) Deputy clerk-data entry operator I, which shall include all municipal court employments at the entry level assigned to operate data entry devices for the purpose of entering and verifying a wide variety of data from coded or uncoded source documents.

(c) Deputy clerk-experienced level, which shall include all municipal court employments assigned clerical tasks requiring exercise of discretion as to methods and priorities and for which supervision is available on a periodic basis only.

(d) Deputy clerk-data entry operator II, which shall include all municipal court employments at the experienced working level assigned to operate data entry devices for the purpose of entering

and verifying a wide variety of data from coded or uncoded source documents.

(e) Deputy clerk-senior level, which shall include all municipal court employments assigned complex clerical work involving responsibility for the establishment, maintenance, calendaring, issuance of process, and updating of case records using manual and automated systems.

(f) Deputy clerk-specialist level, which shall include all municipal court employments assigned lead direction of a work unit or assigned clerical duties of a complex administrative nature, requiring exercise of initiative and discretion in work organization, methods, and priorities.

(g) Deputy clerk-courtroom clerk, which shall include all municipal court employments assigned clerical duties involving responsibility for keeping the minutes of court proceedings and the processing and maintenance of a variety of documents and records.

(h) Municipal court division supervisor or court services coordinator-exempt, which shall include all municipal court employments assigned responsibility for planning, organizing, and directing the clerical activities of a division in a municipal court including the supervision of clerical staff.

(i) Court operations coordinator I and II, or court services coordinator-exempt-levels A and B, which shall include any municipal court position charged with the overall responsibility for managing and supervising court clerical operations including courtroom duties.

(j) Court probation officer, which shall include all municipal court employments assigned to exercise the same powers and duties of deputy probation officers with respect to the business of the court.

(k) Court commissioner, which shall include all municipal court employments who exercise the same powers and duties of judges of the court with respect to traffic and small claims matters.

(*l*) Executive officer, coordinated trial courts of Contra Costa County, which shall be responsible for the overall administration of all municipal court judicial districts in the county.

(m) Municipal court systems and facilities manager, which shall be responsible for managing the development, implementation, and enhancement of court systems, and related work as required.

(n) Municipal court fiscal and administrative manager or fiscal budget officer-exempt, which shall be responsible for planning, reviewing, and coordinating fiscal and accounting activities of the county's municipal courts, and related work as required.

(o) Municipal court accounting specialist, which shall be responsible for assisting the municipal court fiscal and administrative manager with departmental budgetary and accounting activities, and for coordinating the day-to-day activities of the court collections unit.

(p) Municipal court collection agent, which shall be responsible for intensive collection efforts on delinquent court accounts.

The board of supervisors may create a new class or classes by specifying the number of positions for each new class and the compensation therefor, provided that the new class or classes shall be effective only until January 1 of the second year following the calendar year in which the classes are created, unless the change has been incorporated into this article.

SEC. 8. Section 73353 of the Government Code is repealed.

SEC. 8.2. Section 73353 is added to the Government Code, to read:

73353. Effective October 1, 1997, classes of positions provided in Section 73351 are allocated to the salary schedule as follows:

Class Title	Salary Schedule	Pay Level
Deputy Clerk-Beginning Level	C5-1320	1700-2067
Deputy Clerk-Experienced Level	C5-1474	1983-2411
Deputy Clerk-Senior Level	XC-1623	2191-2798
Deputy Clerk-Specialist Level	XC-1745	2474-3160
Deputy Clerk-DEO I	C5-1387	1818-2210
Deputy Clerk-DEO II	C5-1484	2003-2435
Deputy Clerk-Courtroom Clerk	C5-1886	2994-3639
Court Operations Coordinator II	C5-2201	4102-4986
Court Operations Coordinator I	C5-2056	3548-4313
Court Services Coordinator−exempt	C5-1985	3305-4018
Court Services Administrator−exempt−Level A	C5-2261	4355-5294
Court Services Administrator−exempt−Level B	C5-2372	4866-5915
Court Probation Officer	C5-1997	3345-4066
Municipal Court Collection Agent	C5-1777	2685-3264
Municipal Court Computer Systems Technician	C5-1873	2955-3592
Municipal Court Accounting Specialist	XC-1824	2679-3422
Municipal Court Division Supervisor	C5-1911	3070-3731
Municipal Court Systems and Facilities Manager	C5-2246	4291-5215
Municipal Court Fiscal and Administrative Manager	C5-2269	4390-5336
Executive Officer, Coordinated Trial Courts of Contra Costa County	C5-2829	7684-9340

SEC. 8.4. Section 73353.2 of the Government Code is amended to read:

73353.2. The Contra Costa County Board of Supervisors may adopt a resolution establishing a pay-for-performance bonus as defined in subdivision (d). Such a resolution shall state that the bonus program shall be funded by the county solely out of county funds, that the compensation is not a "court operation" for purposes of Sections 77003 and 77204, that the payment of the compensation shall not be a state obligation under the Brown-Presley Trial Court Funding Act, the Trial Court Realignment and Efficiency Act of 1991, or any other related measure, and that the county agrees not to seek funding from the state for the payment of the authorized compensation. If such a resolution is adopted:

(a) At six-month intervals, on January 1 and July 1 of each calendar year, the Executive Officer, Coordinated Trial Courts of Contra Costa County, may conduct assessments of all permanent employees in designated classes, for the purpose of determining eligibility for receipt of a pay-for-performance bonus.

(b) The appointing authority for the position of Executive Officer, Coordinated Trial Courts of Contra Costa County, may conduct an assessment on each January 1 and July 1 for the purpose of determining eligibility for receipt of a pay-for-performance bonus.

(c) The employees described in subdivisions (a) and (b) who are determined eligible for a pay-for-performance bonus at the semiannual review may be awarded that bonus. No pay-for-performance bonus may be awarded for a period longer than six months from the date of the semiannual review. Performance must be reevaluated each six months and reauthorization approved pursuant to subdivisions (a) and (b) for any bonus to continue.

(d) "Pay-for-performance bonus," as used in this section, means a monthly bonus, based on performance, equal to either 2.5 percent or 5 percent of the employee's monthly base pay as of the date of the semiannual review, to be awarded for up to a six-month period.

SEC. 8.6. Section 73354 of the Government Code is amended to read:

73354. Certain classifications in the municipal courts are deemed to be equivalent in job and salary level to certain classifications in the service of Contra Costa County and whenever the salary of a classification in the service of Contra Costa County is adjusted by the board of supervisors, the salary of the comparable classification in the municipal courts shall be adjusted a commensurate number of levels on the salary schedule. The adjustment shall be effective on the same day as the effective date of the action by the board of supervisors as it applies to the county classifications, but the adjustment shall be effective only until January 1 of the second year following the calendar year in which the adjustment is made, unless the change has been incorporated into Article 2 (commencing with Section 73340) of Chapter 10.

(a) The individual court class and equivalent county class or relationship are as follows:

Court Class	Equivalent County Class
Deputy Clerk−Beginning	3% above Clerk−Beginning
Deputy Clerk−Experienced	Clerk−Experienced
Deputy Clerk−Senior	Clerk−Senior
Deputy Clerk−Specialist	Clerk−Specialist
Deputy Clerk−DEO I	Data Entry Operator I
Deputy Clerk−DEO II	Data Entry Operator II
Court Probation Officer	Deputy Probation Officer III
Municipal Court Reporter	Superior Court Reporter
Deputy Clerk−Courtroom Clerk	4.8% below Superior Court Clerk

(b) The municipal court classes listed below are designated management classes and are eligible for all of the compensation and benefit considerations that the board of supervisors may extend to county management employees. Whenever the board of supervisors adopts a general salary adjustment for county management classes, the respective salary schedules of municipal court management classes shall be adjusted by an equivalent percentage amount. In no event shall the salary of Municipal Court Division Supervisor be less than 2.5 percent above the salary of Deputy Clerk-Courtroom Clerk.

Management Positions:

Municipal Court Division Supervisor or Court Services Coordinator-Exempt

Court Operations Coordinator II or Court Services Administrator-Exempt-Level A

Court Operations Coordinator I or Court Services Administrator-Exempt-Level B

Municipal Court Systems and Facilities Manager

Municipal Court Fiscal and Administrative Manager or Fiscal Budget Officer-Exempt

Executive Officer, Coordinated Trial Courts of Contra Costa County

(c) The class of court probation officer shall be allocated to a five-step salary schedule in 5 percent incremental steps with the top step equivalent to the top step of deputy probation officer III. Upon appointment, a new court probation officer shall be allocated to the first step of the salary schedule, except that an appointee with exceptionally high qualifications and experience may be appointed at a higher step with the board of supervisors' approval.

(d) The class of court commissioner shall be allocated to a three-step salary schedule, in 5 percent incremental steps with the third step equivalent to 85 percent of the salary of a municipal court judge in the County of Contra Costa. Upon appointment, a new court

commissioner shall be allocated to the first step of the schedule, except that an appointee with exceptionally high qualifications and experience may be appointed at a higher step with the board of supervisors' approval.

SEC. 8.8. Section 73355 of the Government Code is amended to read:

73355. The Executive Officer, Coordinated Trial Courts of Contra Costa County, shall serve as the clerk of the court for each judicial district and shall be appointed by a majority of the judges of Contra Costa County. Except as provided in Sections 73348 and 73356, the Executive Officer, Coordinated Trial Courts of Contra Costa County, shall appoint all other employments in the municipal court offices of the judicial districts in Contra Costa County. Persons in these positions shall serve as deputy clerks, with full statutory authority, in addition to other duties set forth in Section 73351.

SEC. 9. Section 73356 of the Government Code is amended to read:

73356. Certain classifications in the municipal courts are excluded from the merit system.

(a) A majority of the judges in Contra Costa County shall appoint the Executive Officer, Coordinated Trial Courts of Contra Costa County, whose position shall be exempt from the merit system. The Executive Officer, Coordinated Trial Courts of Contra Costa County, shall serve at the pleasure of the judges, and may be removed by a majority of the judges at their discretion.

(b) Appointment to the classification of court commissioner shall be made in accordance with Section 73362.

SEC. 9.2. Section 73358 of the Government Code is repealed.

SEC. 9.4. Section 73358 is added to the Government Code, to read:

73358. The total number of positions authorized for operation of municipal courts in Contra Costa County is as follows:

Class Title	Number of Positions
Deputy Clerk–(Deep Class), including Beginning, experienced, senior, and Specialist Levels	230
Deputy Clerk–DEO I or II	26
Deputy Clerk–Courtroom Clerk	18
Court Operations Coordinator II or Court Services Administrator–Exempt–Level A	2
Court Operations Coordinator I or Court Services Administrator–Exempt–Level B	2
Court Probation Officer	4
Municipal Court Division Supervisor or Court Services Coordinator–Exempt	15
Municipal Court Computer Systems Technician	1

Municipal Court Accounting Specialist	1
Municipal Court Collection Agent	1
Municipal Court Systems and Facilities Manager	1
Municipal Court Fiscal and Administrative Manager or Fiscal Budget Officer—Exempt	1
Executive Officer, Coordinated Trial Courts of Contra Costa County	1

SEC. 9.6. Section 73363 of the Government Code is amended to read:

73363. (a) Upon the adoption of a resolution by the board of supervisors finding that there are sufficient funds available in the budget for a particular municipal court district and acknowledging that the judges of that district have determined the business of the court requires such occasional service, there shall be one position of temporary court commissioner to serve that municipal court district.

(b) A temporary court commissioner shall be appointed by the presiding judge of the court from a list of temporary court commissioners established and approved by a majority of the judges of that court. The presiding judge shall assure that all temporary commissioners maintain current knowledge of the court's personnel and procedures. The court shall periodically review the performance of each temporary commissioner and shall maintain an ongoing training program to maintain their skills. Each temporary commissioner shall possess the same qualifications the law requires of a municipal court judge, and shall have completed an orientation program satisfactory to the presiding judge, including a review of the procedures and practices of the court, together with observation of each particular calendar to which the commissioner may be assigned, and shall not engage in the private practice of law before any court of the municipal court to which he or she is appointed, and is subject to disqualification as provided for judges.

(c) A temporary court commissioner shall receive, as sole compensation for that service, an hourly fee for each hour or fraction of an hour of service which is equivalent of the hourly wage of the first step in the salary range for full-time official municipal court commissioners in Contra Costa County, without any other benefit included in the compensation of any other municipal court officer or employee in Contra Costa County.

(d) A temporary court commissioner shall perform those functions conferred by law and assigned by the presiding judge. Before any action or proceeding is tried or heard by a temporary court commissioner, any party to, or any attorney appearing in, the action or proceeding shall, however, be entitled to require, by oral or written motion without notice, that the action or proceeding be reassigned or transferred, whereupon the action or proceeding shall be reassigned or transferred as promptly as possible to a judge, court

commissioner, or referee of the court. The court shall, prior to the commencement of any such trial or hearing, provide notice to each party or attorney of record in the action or proceeding of this entitlement to require reassignment or transfer.

SEC. 9.8. Section 73364 of the Government Code is repealed.

SEC. 10. Section 73365 of the Government Code is amended to read:

73365. If an increase in the business of the court or any other emergency requires a greater number of employees for the prompt and faithful discharge of the business of the court than the number expressly provided by law or requires the performance of duties of positions in the lowest salary bracket where all those positions have been filled, with the approval of the presiding judge in a two-judge district, and the majority of the judges in a three-or-more-judge district, the Executive Officer, Coordinated Trial Courts of Contra Costa County, may appoint as many additional deputies as are needed. The additional deputies shall be appointed at the entrance level classification and shall be selected in the same manner as those for whom express provision is made, and they shall receive compensation on the basis of the hourly equivalent to the base rate of pay as provided in the salary schedule in the same amount as the lowest salary bracket provided for that class of employee. Employees may continue in those positions not longer than 90 days after the adjournment of the next regular session of the Legislature.

SEC. 10.2. Section 73366 of the Government Code is amended to read:

73366. Except as provided in this article, all persons serving as permanent employees of the municipal courts shall be assigned to the positions authorized in this article in accordance with the duties and responsibilities of their position classifications. The assignments shall be made by the appointing authority in accordance with the rules under the merit system or the exempt system established by court personnel rules.

SEC. 10.4. Section 73399 of the Government Code is amended to read:

73399. (a) The court executive officer/clerk of the court may appoint:

(1) One Assistant Court Executive Officer who shall have a salary in range 91.5.

(2) One Operations Manager who shall have a salary in range 85.5.

(3) One Court Administrative Assistant who shall have a salary in range 62.0.

(4) One Office Assistant III who shall have a salary in range 47.0.

(5) One Court Services Supervisor who shall have a salary in range 64.0.

(6) Five Courtroom Clerks who shall have a salary in range 54.0.

(7) Six Court Services Clerks III who shall have a salary in range 54.0.

(8) Four Court Service Clerks II who shall have a salary in range 49.0.

(9) Seven Court Service Clerks I who shall have a salary in range 44.0.

(b) The court executive officer, with the approval of the board of supervisors, may appoint additional employees as necessary, each appointment to remain in effect only until January 1 of the second fiscal year following the fiscal year in which the appointment was made, unless subsequently ratified by the Legislature.

(c) Whenever reference to a numbered salary range is made in any section of this article, the schedule of hourly rates of pay and approximate monthly equivalents found in the Salary Resolution of the County of Kings in effect on January 1, 1995, shall apply.

(d) If the board of supervisors adopts a revised salary resolution for county employees or applies new salary range numbers for the purpose of salary adjustment, the new salary rates shall apply equally to the positions named in this article. Any salary adjustment made pursuant to this section shall be effective on the same date as the action applicable to other county permanent classified employees, but shall remain in effect only until January 1 of the second fiscal year following the fiscal year in which that adjustment in salary is made, unless subsequently ratified by the Legislature.

SEC. 10.6. Section 73523 of the Government Code is amended to read:

73523. The consolidated superior and municipal courts judges may, by a majority vote, appoint a court executive officer who shall be the clerk of the superior and municipal courts of San Mateo County. The court executive officer shall serve at the pleasure of a majority of the judges. The court executive officer shall receive a biweekly salary at the rate specified in salary range number 5207 of the salary schedule. However, that salary may be adjusted pursuant to Section 73525. The court executive officer shall be the appointing authority for the positions listed in Section 73524.

The superior and municipal court judges shall prescribe and regulate by majority vote the duties and authority of the court executive officer, among which shall be:

(a) To direct and coordinate the nonjudicial activities of the consolidated superior and municipal courts.

(b) To coordinate the personnel practices in compliance with rules of the consolidated courts, California Rules of Court, or other pertinent rules or statutes.

(c) To prepare and administer the budget of the consolidated courts.

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

(e) To initiate studies and prepare appropriate recommendations and reports to the presiding judge and judges relating to the business

of the consolidated superior and municipal courts, including, but not limited to, such matters as standardization of forms and procedures, and of classification and compensation of court attachés.

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

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

(h) To prepare procedure guides for the personnel of the consolidated superior and municipal courts.

(i) To make arrangements for and attend all meetings of the judges.

(j) To serve as liaison for the consolidated superior and municipal courts with other persons, committees, boards, groups, and associations as directed by the presiding judge.

SEC. 10.8. Section 73524 of the Government Code is amended to read:

73524. The number of positions within each job classification which may be filled by appointment by the municipal court administrator, and the salary which constitutes compensation for each job classification, are as follows, subject to the authority of the board of supervisors to adjust the monthly salary pursuant to Section 73525:

Number	Classification	Salary Range Number
1	Deputy District Attorney III	4498
3	Deputy Court Executive Officer	3885
1	Deputy District Attorney II	3700
1	Financial Services Manager II	3700
1	Family Court Services Manager	3547
1	Information Technology Manager	3523
2	Supervising Research Attorney	3498
3	Court Services Manager II	3355
1	Information Technology Analyst	3139
1	Chief Court Investigator	3044
6	Management Analyst III	2897
2	Senior Accountant	2801
7	Research Attorney	2752
7	Family Court Counselor	2630
3	Court Investigator	2527
2	Information Technology Technician	2488
1	Community Program Specialist III	2365

3	Accountant I/II	1954/2284
1	Interpreter Services	2271
6	Court Services Manager I	2271
12	Municipal Court Clerk Supervisor	2271
1	Executive Assistant	2131
20	Municipal Courtroom Clerk	2096
25	Superior Courtroom Clerk II	2096
1	Judicial Secretary	1933
3	Legal Secretary II	1841
8	Jury Office Specialist	1765
18	Lead Deputy Court Clerk	1765
1	Senior Utility Worker	1764
3	Fiscal Office Specialist	1754
1	Lead Legal Office Assistant	1751
7	Legal Office Specialist	1751
2	Administrative Secretary III	1751
1	Legal Exhibits Technician	1680
1	Lead Data Entry Operator	1668
2	Lead Fiscal Office Assistant	1668
1	Office Specialist	1627
1	Legal Word Processor	1627
3	Administrative Secretary II	1668
1	Utility Worker II	1601
104	Deputy Court Clerk I/II	1470/1593
1	Public Service Specialist	1546
8	Fiscal Office Assistant II	1531
3	Data Entry Operator II	1472
5	Office Assistant II	1472

SEC. 11. Section 73525 of the Government Code is amended to read:

73525. Subject to Section 72001, the compensation for any classification listed in Section 73523 or 73524 may be increased pursuant to the San Mateo County Salary Ordinance Resolution and Memoranda of Understanding, if any, with the recognized labor organizations representing court employees. Whenever a reference to a salary range number is made in this article, the following schedule of biweekly salaries shall apply:

Salary Range Number	Steps				
	A	B	C	D	E
1470	940.80	994.40	1052.00	1112.00	1176.00
1472	942.40	996.00	1053.60	1113.60	1177.60
1531	980.00	1036.00	1095.20	1158.40	1224.80
1546	989.40	1046.40	1106.40	1169.60	1236.80
1593	1019.20	1078.40	1140.00	1205.60	1274.40
1601	1024.80	1083.20	1145.60	1211.20	1280.80
1627	1041.60	1100.80	1164.00	1231.20	1301.60
1668	1067.20	1128.80	1193.60	1261.60	1334.40
1680	1075.20	1136.80	1202.40	1271.20	1344.00
1751	1120.80	1184.80	1252.80	1324.80	1400.80
1754	1122.40	1187.20	1255.20	1327.20	1403.20
1764	1128.80	1193.60	1262.40	1334.40	1411.20
1765	1129.60	1194.40	1263.20	1335.20	1412.00
1841	1178.40	1245.60	1317.60	1392.80	1472.80
1933	1236.80	1308.00	1383.20	1462.40	1546.40
1954	1250.40	1322.40	1398.40	1478.40	1563.20
2096	1341.60	1418.40	1500.00	1585.60	1676.80
2131	1364.00	1442.40	1524.80	1612.00	1704.80
2271	1453.60	1536.80	1624.80	1718.40	1816.80
2284	1461.60	1545.60	1634.40	1728.00	1827.20
2365	1513.60	1600.80	1692.00	1789.60	1892.00
2488	1592.00	1684.00	1780.00	1882.40	1990.40
2527	1617.60	1710.40	1808.00	1912.00	2021.60
2630	1683.20	1780.00	1881.60	1989.60	2104.00
2752	.00	1862.40	1968.80	2082.40	2201.60
2801	1792.80	1895.20	2004.00	2119.20	2240.80
2897	1854.40	1960.80	2072.80	2192.00	2317.60
3007	1924.80	2035.20	2152.00	2275.20	2405.60
3044	1948.00	2060.00	2178.40	2303.20	2435.20
3139	2008.80	2124.00	2246.40	2375.20	2511.20
3355	2147.20	2270.40	2400.80	2538.40	2684.00
3498	2238.40	2367.20	2503.20	2646.40	2798.40
3523	2254.40	2384.00	2520.80	2665.60	2818.40
3547	2270.40	2400.00	2538.40	2684.00	2837.60
3700	2368.00	2504.00	2647.20	2799.20	2960.00
3885	2486.40	2628.80	2780.00	2939.20	3108.00
4498	2878.40	3044.00	3218.40	3403.20	3598.40
5207	3332.80	3524.00	3725.60	3939.20	4165.60

SEC. 11.2. Section 73528 of the Government Code is amended to read:

73528. Notwithstanding the provisions of Article 4 (commencing with Section 72150) of Chapter 8 and the other provisions of this article, and in order to equalize the compensation of employees of the consolidated superior and municipal court with the compensation paid to county employees with commensurate duties and responsibilities, upon recommendation of the clerk of the court with the approval of the judges of the consolidated superior and municipal courts and the Board of Supervisors of the County of San Mateo, an officer or an attaché of the court, whether appointed under the provisions of this article or under Article 4 (commencing with Section 72150) of Chapter 8, may be paid any compensation, which is within the ranges and increments set forth in this article in excess of or less than the maximum to which such employee would otherwise be entitled. However, that any such salary adjustment shall not extend longer than 90 days after the adjournment of the next general session of the Legislature.

SEC. 11.4. Section 73529 of the Government Code is amended to read:

73529. Official reporters shall be appointed by the judges of the consolidated superior and municipal courts pursuant to the provisions of Section 70043 or 72194 and shall serve at the pleasure of the judges.

(a) The biweekly salary of each official reporter for the performance of duties required of each reporter by law shall be at the rates specified in salary range number 3007 of the salary schedule.

At the time each reporter is hired, the salary of that reporter shall be fixed in the same manner as provided for classified or unclassified employees of the county under the authority of the county charter. A step advancement from step A to step B may be granted on the first day of the pay period following completion of 26 full weeks of service in the position. A person may advance to steps C, D, and E upon completion of successive 52-week periods of service. All merit increases as provided herein shall be made at the determination of the judges of the court.

The per diem compensation for pro tempore reporters shall be one-tenth of step E in the biweekly salary range established for official reporters, except that the rate of per diem compensation shall be prorated on the basis of one-half day of compensation if the pro tempore reporter renders only one-half day of service.

(b) Vacation allowances and sick leave allowances for official reporters shall be the same as provided for classified or unclassified employees of the county under the authority of the county charter.

(c) During the hours which the court is open for the transaction of judicial business, official reporters shall devote full time to the performance of the duties required of them by law and shall not

engage in or solicit to engage in any other employment in their professional capacity.

Each official reporter shall perform the duties required of him or her by law. In addition, the reporter shall render stenographic or clerical assistance, or both, to the judge or judges of the consolidated superior and municipal courts as the judge or judges may direct.

SEC. 11.6. Section 73565 of the Government Code is amended to read:

73565. The municipal court judges may, by a majority vote, appoint a municipal court administrator who shall be the clerk of the municipal court. The municipal court administrator shall serve at the pleasure of a majority of the judges. He or she shall receive a salary of seven thousand and three dollars ($7,003), provided, however, that the salary may be adjusted pursuant to Section 73568. He or she shall be the appointing authority for those positions listed in Section 73566.

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

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

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

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

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

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

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

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

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

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

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

SEC. 11.8. Section 73566 of the Government Code is amended to read:

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

Number	Classification	Monthly Salary
2	Deputy Court Administrator	$3,908−4,839
1	Administrative Services Officer	3,431−4,250
2	Municipal Court Division Manager	3,242−4,014
2	Court Calendar Coordinator	2,519−3,121
1	Supervising Data Processing Coordinator	2,433−3,014
2	Accounting Technician	2,257−2,796
3	Senior Account Clerk	1,943−2,407
5	Account Clerk	1,698−2,104
4	Municipal Court Clerk Supervisor	2,303−2,853
21	Deputy Court Clerk III	1,914−2,372
32.5	Deputy Court Clerk II	1,698−2,104
13	Courtroom Clerk	2,191−2,714
1	Court Interpreter	2,023−2,506
2	Senior Secretary (Confidential)	2,383−2,952
.5	Alcohol & Drug Counselor II	2,970−3,679

SEC. 12. Section 73567 of the Government Code is amended to read:

73567. Whenever reference to a salary other than that of commissioner is made in any section of this article, the schedule of salaries found in the salary and benefits resolution of the County of Monterey in effect on January 1, 1999, shall apply; provided, however, that adjustments to the salaries may be made pursuant to Section 73568.

SEC. 12.2. Section 73568 of the Government Code is amended to read:

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

section shall govern salary adjustments and employee benefits for attachés of the municipal court in Monterey County.

On the effective date of any amendment to a resolution adjusting the salary of a county employee classification, the salary of the equivalent court position shall be adjusted in an equivalent amount.

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

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

SEC. 12.4. Section 73586.1 is added to the Government Code, to read:

73586.1. The work of the superior and municipal courts in Lake County is to be performed, minimally, by each of the positions herein identified by the trial courts of Lake County (all employees paid biweekly with the exception of the Court Executive Officer and Assistant Court Executive Officer who are paid monthly), as follows:

1	Court Executive Officer	Per Court Order
1	Assistant Court Executive Officer	$3,212.59–3,904.97
1	Court Services Coordinator	888.50–1,080.00
3	Court Reporter I	1,281.50–1,557.70
1	Judicial Secretary II	932.90–1,134.00
1	Judiciary Secretary I	854.10–1,038.20
1	Deputy Jury Commissioner	787.20– 956.80
3	Supervising Court Clerk	888.50–1,080.00
11	Court Clerk II	752.80– 915.00
5	Court Clerk I	682.70– 829.80

SEC. 12.6. Section 73604 of the Government Code is amended to read:

73604. (a) The work of the superior and municipal courts in El Dorado County is to be performed, minimally, by each of the positions herein identified by the trial courts of El Dorado County:

	Position	Salary Range
1	Court Executive Officer	$5,657–6,876
1	Court Operations Manager	2,870–3,489

2	Deputy County Counsel IV	4,676–5,685
2	Court Commissioner	8,172–8,172
1	Dispute Resolution Officer	4,676–5,685
1	Departmental Systems Coordinator	2,827–3,437
4	Court Reporter	3,003–3,652
1	Chief Deputy Superior Court Clerk	2,329–2,832
1	Administrative Technician	2,366–2,875
5	Court Operations Supervisor	2,328–2,851
1.5	Family Mediation Counselor	2,769–3,367
1	Executive Secretary	1,924–2,338
1	Senior Accountant	2,922–3,553
.5	Accountant I/II	2,655–3,227
1	Fiscal Technician	1,814–2,206
3	Court Clerk IV	1,929–2,343
12	Court Clerk III	1,830–2,223
14	Judicial Assistant	2,026–2,461
.5	Secretary	1,599–1,943
28	Court Clerk I/II	1,707–2,074
.75	Data Entry Operator II	1,579–1,920

(b) The officers and attaches of the municipal court shall be entitled to the same vacation, sick leave, and benefits and privileges as are granted to other comparable employees of similar classification of El Dorado County under ordinances and resolutions of the board of supervisors.

(c) If an increase in the business of the court or any other emergency requires a greater number of attachés or employees for prompt and faithful discharge of the business of the court other than the number expressly provided in this article or requires the performance of duties of positions in a class not expressly provided in this article, with the approval of the presiding judge of the court and the board of supervisors, the Presiding Judge may appoint in accordance with the El Dorado County employee allocation schedule as many additional attachés or employees as are needed. The additional attachés or employees shall be selected and appointed in the same manner as those for whom express provision is made, and they shall receive salary and compensation as prescribed in this article or as prescribed by ordinance or resolution of the board of supervisors for classes not expressly provided in this article.

(d) All matters affecting the employment of court officers and attachés which are not specifically determined by this article or other provisions of state law shall be governed and regulated by the then current ordinances and resolutions of the Board of Supervisors of El Dorado County.

SEC. 12.8. Section 73644 of the Government Code is repealed.

SEC. 12.9. Section 73644 is added to the Government Code, to read:

73644. The court administrator may appoint the following personnel:

(a) One assistant court administrator. The assistant court administrator shall serve as the assistant clerk of the court and shall receive a biweekly salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator." A person shall not be appointed to the class of assistant court administrator if any of the three deputy court administrator positions are filled.

(b) Three deputy court administrators, who shall serve at the pleasure of the court administrator. The deputy court administrators shall receive a salary within the biweekly range ES-6 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall mean "the court administrator." The deputy court administrator positions shall be filled only upon the equivalent number of corresponding permanent vacancies in the positions denoted in subdivision (c), (d), or (e).

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

services manager II in the classified service of the County of San Diego.

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

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

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

(g) One deputy clerk-staff development specialist or deputy clerk-staff development coordinator as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(h) Eight deputy clerks V, each of whom shall receive a biweekly salary equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities.

(i) Sixteen deputy clerks IV. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. One deputy clerk IV who is assigned to the presiding judge in the master calendar department shall receive a biweekly salary at a rate of 5 percent higher than that specified for the deputy clerk IV. This increased biweekly rate shall apply only during the period of this assignment and shall not apply to paid time off or to terminal payoff.

(j) Seventy-three deputy clerks III, II, or I, deputy clerk-intermediate clerk typists, or deputy clerk-junior clerk typists, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures

clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to deputy clerk I or II may be at any step within the salary range. Up to four of these positions may be filled at the level of deputy clerk-intermediate clerk typist, or deputy clerk-junior clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. A deputy clerk-junior clerk typist shall receive a biweekly salary at a rate equal to that specified for junior clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of seven deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(k) Six confidential deputy administrative clerks or, deputy administrative clerks III, II, or I, as the case may be. A confidential deputy administrative clerk III and a deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for a deputy clerk IV. A confidential deputy administrative clerk II and a deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A confidential deputy administrative clerk I and a deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(*l*) Four deputy clerk-collection officers I, II, or III as the case may be. A deputy clerk-collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. A deputy clerk-collection officer II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego. A deputy clerk-collection officer III shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego. Only one (1) position can be filled at the deputy clerk court collection officer III level. Persons appointed to this position on or after January 1, 1999, shall serve at the pleasure of the court administrator.

(m) Three deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(n) Three deputy clerk-data entry operators. No more than two of the deputy clerk-data entry operator positions may be filled at the deputy clerk-senior data entry operator level. Each of the deputy clerk-data entry operators shall receive a biweekly salary at a rate equal to that specified for data entry operator in the classified service of the County of San Diego. Each of the deputy clerk-senior data entry operators shall receive a biweekly salary at a rate equal to that specified for senior data entry operator in the classified service of the County of San Diego.

(o) One deputy clerk-municipal court secretary who shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

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

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

(r) One deputy clerk-court referral coordinator who shall receive a biweekly salary at a rate 7.25 percent higher than that specified for deputy clerk-court referral officer II. This position shall be filled only upon the equivalent number of corresponding vacancies in the positions denoted in subdivisions (d) and (e) of Section 74359.1. Appointments to the deputy clerk-court referral coordinator may be at any step within the salary range.

(s) One deputy clerk-court referral officer II who shall receive a biweekly salary at a rate equal to that specified for deputy probation officer in the classified service of the County of San Diego. This position shall be filled only upon the equivalent number of corresponding vacancies in the positions denoted in subdivisions (d) and (e) of Section 74359.1. Appointments to the deputy clerk-court referral officer II may be at any step within the salary range.

(t) One deputy clerk-research attorney III who shall receive a biweekly salary equal to that specified for a deputy county counsel III in the classified service of the County of San Diego.

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

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

(w) One deputy clerk-small claims advisor or deputy clerk-small claims counsel, as the case may be. The deputy clerk-small claims advisor shall receive a biweekly salary at a rate of 18.63 percent less than that specified for small claims counsel in the classified service of the County of San Diego. The deputy clerk-small claims counsel shall receive a biweekly salary at a rate equal to that specified for small claims counsel in the classified service of the County of San Diego.

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

analyst II shall receive a biweekly salary at a rate equal to that specified for a systems support analyst II in the classified service of the County of San Diego. A deputy clerk-systems support analyst I shall receive a biweekly salary at a rate equal to that specified for a systems support analyst I in the classified service of the County of San Diego. A deputy clerk-systems support analyst trainee shall receive a salary equal to that specified for a systems support analyst trainee in the classified service of the County of San Diego.

(y) Three deputy clerk-municipal court computer specialists I, II, or III, as the case may be. A deputy clerk-municipal court computer specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, or III, respectively, in the classified service of the County of San Diego.

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

(aa) Notwithstanding subdivision (b) of Section 73649, up to 10 extra help positions (hourly rate) to be appointed by, and serve at the pleasure of, the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(ab) Notwithstanding subdivision (b) of Section 73649, up to 10 deputy clerk-court workers may be appointed by, and serve at the pleasure of, the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73640 to 73650, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class shall be within the range proposed for the class pending

establishment, at a rate determined by the court administrator, following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed 18 months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When that appointment is made, the class, compensation (including salary and fringe benefits), and number of the positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to those classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and board of supervisors.

(ac) Notwithstanding subdivision (b) of Section 73649, the court administrator may appoint up to 20 temporary extra help deputy clerk-municipal court trainees I, II, III, or V, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive an hourly salary at a rate equal to that specified for student worker V in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

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

(ae) Notwithstanding any other provision of law, the number of positions and compensation of positions in classifications authorized under subdivisions (a) to (ac), inclusive, and under Sections 73643, 73646, 73649.1, and 73650 may be adjusted as necessary by action of the majority of the judges. The rules regarding appointment of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges adjusting those positions shall designate the class title or titles, number of positions, and compensation for each respective class. Any adjustment made pursuant to this subdivision shall be effective upon action of a majority of the judges and shall remain in effect until ratified by the Legislature.

SEC. 13. Section 73649.1 of the Government Code is amended to read:

73649.1. (a) By order entered in the minutes of the court, a majority of judges may appoint two commissioners. However, if the board of supervisors finds that there are sufficient funds for one additional commissioner and adopts a resolution to that effect, a majority of judges may appoint an additional commissioner. The commissioners shall serve at the pleasure of the judges and shall receive a salary equal to 80 percent of the salary of a judge of the municipal court.

(b) A commissioner shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for a chief deputy county counsel in the classified service of the County of San Diego. However, a commissioner shall be entitled to (1) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period, and (2) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period until the commissioner has 15 years of county/court service. At that time the commissioner will earn vacation at the same rate as chief deputy county counsel with 15 years of county service.

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

SEC. 13.2. Section 73665 of the Government Code is repealed.

SEC. 13.3. Section 73665 is added to the Government Code, to read:

73665. (a) Effective January 1, 1999, the Sheriff of Humboldt County shall assume the duties and responsibilities of the Humboldt County Marshal and the office of the marshal shall be consolidated with the office of sheriff.

Upon the effective date of the consolidation there shall be established within the Humboldt County Sheriff's Department a unit designated as the Court Security Services Division. The Sheriff of Humboldt County shall be responsible for the management and

operation of this division, in accordance with this article. Personnel assigned to the Court Security Services Division shall have all the power and shall perform all the duties of marshals and constables as set forth in Sections 71264 to 71269, inclusive.

(b) The sheriff shall not transfer or otherwise divert from the County Security Services Division any personnel or other resources allocated to the division by the annual budget approved by the board of supervisors, except on a temporary basis in the event of an emergency requiring the immediate commitment of significant resources for other functions performed by the sheriff.

(c) Neither this article nor any provision hereof, shall be deemed in any manner to limit or otherwise impair the power vested by all other laws, including Section 68073, in the Superior Court of Humboldt County to secure proper provision of court-related services.

SEC. 13.5. Section 73665.5 of the Government Code is repealed.

SEC. 13.6. Section 73665.6 of the Government Code is repealed.

SEC. 13.7. Section 73666 of the Government Code is repealed.

SEC. 13.8. Section 73666 is added to the Government Code, to read:

73666. (a) Permanent employees of the marshal's office on the effective date of consolidation under this article shall be deemed qualified, and no other qualifications shall be required for employment or retention. Probationary employees of the marshal's office on the effective date of a consolidation under this article shall retain their probationary status and rights, and shall not be deemed to have transferred so as to require serving a new probationary period.

(b) County service of employees of the marshal's office on the effective date of the consolidation under this article, shall be counted toward seniority in the consolidated office, and all time spent in the same, equivalent, or higher classification shall be counted toward classification seniority.

(c) No provision of this section shall be deemed to restrict the authority of the sheriff to discipline any employee in accordance with county personnel policies, and memoranda of understanding, or rules, regulations, and procedures otherwise applicable, and except as otherwise expressly provided in this section, the discretion of the sheriff to assign, promote, direct, and control employees formerly assigned to the marshal's office shall not be deemed in any manner restricted by virtue of the abolition or consolidation.

SEC. 14. Section 73681.1 of the Government Code is amended to read:

73681.1. The judges of the Fresno County courts may appoint eight court commissioners who shall possess the same qualifications as the law requires of a judge of a superior court. He or she shall hold office at the pleasure of the judges and shall receive a salary of 85 percent of the salary of a judge of the superior court.

SEC. 14.2. Section 73682 of the Government Code is amended to read:

73682. There shall be one court executive officer to be appointed by the judges of the Fresno County courts who shall be the clerk, administrator, and secretary of the court, pursuant to Section 69898. He or she shall hold office at the pleasure of the judges and shall receive a salary as fixed by the judges of the court.

SEC. 14.4. Section 73683 of the Government Code is repealed.

SEC. 14.5. Section 73683 is added to the Government Code, to read:

73683. (a) The work of the superior and municipal courts in Fresno County is to be performed, minimally, by each of the positions herein identified by the trial courts of Fresno County.

(b) The executive officer may appoint the following court personnel who shall receive a salary at the range indicated in the Fresno County Salary Resolution:

(1) One Associate Court Executive Officer-Downtown Operations, at salary within Band "C."

(2) One Assistant Court Executive Officer, at salary within Band "E."

(3) One Superior Court Program Coordinator, at salary within Band "G."

(4) Two Superior Court Program Managers, at salary within Band "G."

(5) Four Municipal Court Division Managers, at salary within Band "G."

(6) Three County Clerk Program Coordinators/County Clerk Program Coordinator-A, at salary range 1435.

(7) One Juvenile Court Manager, at salary within Band "F."

(8) One Administrative Services Assistant, at salary within Band "H."

(9) One Court Personnel Analyst I or II, at salary range 1260 or 1456, respectively.

(10) One Senior Research Attorney, at salary range 2305.

(11) Eight Research Attorneys I, II, or III, at salary range 1302, 1667, or 2005, respectively.

(12) One Senior Superior Court Investigator, at salary range 1518.

(13) Three Superior Court Investigators I or II, at salary range 1231 or 1378, respectively.

(14) Seven Superior Court Examiners I or II, at salary range 1026 or 1140, respectively.

(15) One Senior Accountant/Senior Accountant-A, at salary range 1476.

(16) One Jury Services Program Supervisor, at salary range 1045.

(17) One Court Interpreter Service Coordinator, at salary range 1186.

(18) One Senior Court Interpreter, at salary range 1007.

(19) Four Court Interpreters, at salary range 980.

(20) Three Systems and Procedures Analysts I, II, or III/Systems and Procedures Analysts I-A, II-A, or III-A, at salary range 1086, 1342, or 1555, respectively.

(21) Three Court Administrative Secretary-A, at salary range 1065.

(22) Eight Court Secretary I, II, or III, at salary range 714, 786, or 913, respectively.

(23) One Arbitration Clerk, at salary range 960.

(24) Two Supervising Court Clerk-A, at salary range 1338.

(25) Ten Senior Court Clerk/Senior Court Clerk-A, at salary range 1194.

(26) Forty-six Court Clerks I or II/Court Clerk I-A or II-A, at salary range 934 or 1045, respectively.

(27) Five Supervising Legal Process Clerks/Supervising Legal Process Clerk-A, at salary range 1338.

(28) Five Senior Legal Process Clerks/Senior Legal Process Clerks-A, at salary range 1194.

(29) Fifty-one Legal Process Clerks I or II/Legal Process Clerks-A or II-A, at salary range 934 or 1045, respectively.

(30) One Accountant Clerk I, II, or III/Accountant Clerk I-A, II-A, or III-A, at salary range 625, 692, or 778, respectively.

(31) One Supervising Office Assistant II/Supervising Office Assistant II-A, at salary range 974.

(32) Sixty-five Office Assistants I, II, or III/Office Assistant I-A, II-A, III-A, at salary range 540, 656, or 729, respectively.

(c) Salary ranges indicated in paragraphs (1) to (31), inclusive, of subdivision (a), are effective October 20, 1997.

(d) The executive officer may appoint any combination of the specified number of court clerks, legal process clerks, office assistants, secretaries, research attorneys, investigators, examiners, or systems and procedures analysts, not to exceed the total number of those positions described in paragraphs (1) to (32), inclusive, of subdivision (b).

SEC. 14.6. Section 73684 of the Government Code is amended to read:

73684. Except as specifically provided in this article to the contrary, all benefits, privileges, and other provisions affecting the employment of county employees shall apply to all officers and attachés of the municipal court.

SEC. 14.8. Section 73691 of the Government Code is amended to read:

73691. A majority of the judges may appoint 33 full-time court reporters to serve at the pleasure of the judges and to be paid an annual salary established according to the following salary schedule:

Step 1. $45,366
Step 2. $47,640
Step 3. $49,997
Step 4. $52,498

Reporters shall initially be placed at step 1 of the salary schedule except reporters may be placed at a higher step with the approval of the county administrative officer, and shall be advanced one step annually upon the anniversary date of that employment. If, because of recruitment difficulties, it is necessary to appoint a court reporter at a step of the salary schedule which is above the step at which any court reporters are currently employed, all court reporters below that step will move to the higher step at the discretion of the judges of the court. Each reporter shall accrue and be entitled to receive sick leave benefits at the rate of 3.6924 hours of sick leave with pay for each pay period or major fraction thereof, served up to an accumulative total of 156 working days. Each reporter shall accrue and receive vacation at the same rate as judges of that court not to exceed 21 working days a year which may be accrued not to exceed 42 days to be taken when the judge to which he or she has been assigned consents.

SEC. 15. Section 73692 of the Government Code is amended to read:

73692. Pursuant to Section 72194, the judges of the court may appoint as many additional reporters as the business of the court requires, who shall be known as official reporters pro tempore. They shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in the section for reporting testimony and proceedings the official reporters pro tempore shall be paid in accord with the following:

Each pro tempore reporter shall be paid one hundred seventy-four dollars and forty-eight cents ($174.48) for a full day on duty under order of the court. For purposes of receiving the above compensation, one or more of the following shall apply:

(a) The court has indicated in advance that the pro tempore assignment is for a full day.

(b) The pro tempore reporter was on duty for more than four hours.

Each pro tempore reporter shall be paid one hundred sixteen dollars and thirty-two cents ($116.32) for one-half day of duty under order of the court when (a) the court has indicated in advance that the pro tempore assignment is for a half day and the pro tempore reporter is on duty for four hours or less, generally exclusive of the noon recess; or (b) the court has indicated in advance that the pro tempore assignment is for a full day but the pro tempore reporter is on duty for four hours or less and consents to being released for the balance of the day.

Where a pro tempore reporter has agreed to a one-half day assignment, the courts shall make every practicable effort to assure that the pro tempore reporter shall not be on duty for longer than four hours, unless the pro tempore reporter agrees with the court to work beyond four hours. In the latter case, the full-day pro tempore

rate of one hundred seventy-four dollars and forty-eight cents ($174.48) shall apply.

Nothing herein shall be construed to limit the court's authority to in all instances pay a pro tempore reporter at the rate of one hundred seventy-four dollars and forty-eight cents ($174.48) when, in the court's judgment, that rate is necessary to obtain pro tempore reporter services for the court.

The above payments shall upon order of the court be a charge against the general fund of the county.

SEC. 15.2. Section 73695 of the Government Code is amended to read:

73695. Interpreters appointed by the court pursuant to Section 68092 shall be allowed for each day's actual attendance upon the court when legally required, a fee as may be allowed by the court not to exceed one hundred fourteen dollars and ninety-six cents ($114.96) per day or sixty-three dollars and eighty cents ($63.80) per half day. Where an interpreter has worked beyond 5 p.m., the interpreter will be paid at an additional rate of ten dollars ($10) per hour for all hours or portions thereof worked after 5 p.m. An interpreter employed in a permanent or extra help position shall be paid at an additional rate of one and one-half times the regular hourly rate of pay for all hours or portions thereof worked beyond eight hours in a day.

SEC. 15.4. Section 73699 of the Government Code is amended to read:

73699. There shall be one associate court executive officer-branch court operations to be appointed by the Court Executive Officer of the Fresno County Courts, who shall receive a salary specified in Band "D" of the Fresno County Salary Resolution in effect on the effective date of this article. The provisions of Section 71183 shall not apply to this position.

SEC. 15.6. Section 73699.1 of the Government Code is repealed.

SEC. 15.7. Section 73699.1 is added to the Government Code, to read:

73699.1. (a) The work of the superior and municipal courts in Fresno County is to be performed, minimally, by each of the positions herein identified by the trial courts of Fresno County.

(b) The Court Executive Officer of the Fresno County Courts may, in consultation with the judges of the court, appoint the following personnel who shall be compensated pursuant to Sections 73683, 73684, 73685, 73686, and 73687:

(1) Forty-two Office Assistants I, II, or III/Office Assistants I-A, II-A, or III-A.

(2) Forty-two Legal Process Clerks I or II/Legal Process Clerks I-A, or II-A.

(3) Eight Supervising Legal Process Clerks.

(c) The executive officer may appoint any combination of the specified number of legal process clerks and office assistants not to

exceed the total number of those positions described in paragraphs (1) to (32), inclusive, of subdivision (b).

SEC. 15.8. Section 73736 of the Government Code is amended to read:

73736. The clerk-administrator may appoint:

(a) One deputy municipal court administrator who shall receive a monthly salary at a rate specified in range 272.

(b) Five municipal court clerks III, each of whom shall receive a monthly salary at a rate specified in range 170.

(c) Ten municipal court clerks II, each of whom shall receive a monthly salary at a rate specified in range 155.

(d) Seven municipal court clerks I, each of whom shall receive a monthly salary at a rate specified in range 137.

(e) One court reporter, who shall receive a monthly salary rate specified in range 282.

(f) Two interpreters, each of whom shall receive a monthly salary at a rate specified in range 179.

(g) One accounting supervisor, who shall receive a monthly salary at a rate specified in range 202.

(h) Six municipal court clerk supervisors, each of whom shall receive a monthly salary at a rate specified in range 197.

(i) One account clerk III, who shall receive a monthly salary at a rate specified in range 151.

(j) One account clerk II, who shall receive a monthly salary at a rate specified in range 133.

(k) One legal office assistant II, who shall receive a monthly salary at a rate specified in range 165.

(*l*) One court computer coordinator, who shall receive a monthly salary at a rate specified in range 239.

SEC. 16. Section 73759 of the Government Code is amended to read:

73759. (a) Clerical employees of the district may be appointed, as follows:

(1) Borden Division:

(A) One municipal court supervisor who shall receive the salary specified in range 18 to increase to range 41 effective February 1, 1999.

(B) Two municipal court clerks III who shall receive the salary specified in range 33 in Table B.

(C) Two and one-half municipal court clerks II who shall receive the salary specified in range 31 in Table B.

(2) Chowchilla Division:

(A) One municipal court supervisor who shall receive the salary specified in range 18 to increase to range 41 effective December 1, 1998.

(B) Two municipal court clerks III's who shall receive the salary specified in range 33 in Table B.

(C) One municipal court clerk II who shall receive the salary specified in range 31 in Table B.

(3) Madera Division:

(A) One municipal court supervisor who shall receive the salary specified in range 18, to increase to range 41 effective February 1, 1999.

(B) One senior municipal court clerk who shall receive the salary specified in range 35 in Table B.

(C) Ten and one-quarter municipal court clerks I or II. Municipal court clerks I shall receive the salary specified in range 25 in Table B. Municipal court clerks II shall receive the salary specified in range 31 in Table B.

(D) One court interpreter who shall receive the salary specified in range 34 (Table B).

(4) Sierra Division:

(A) One municipal court supervisor who shall receive the salary specified in range 18, to increase to range 41 effective February 1, 1999.

(B) Two municipal court clerks III who shall receive the salary specified in range 33 in Table B.

(C) Two municipal court clerks II who shall receive the salary specified in range 31 in Table B.

(D) One municipal court clerk I who shall receive the salary specified in range 25 in Table B.

(b) Notwithstanding the provisions of Article 4 (commencing with Section 72150), and the provisions of this article, whenever the business of the district requires a greater number of employees in order to effectively carry out the duties and functions of the respective divisions, a majority of the judges of the district may, with the approval of the board, establish new positions for officers, attachés, and employees in addition to those provided by this article. The order and approval establishing such positions shall designate the position, title, and salary range for each such position.

(c) At the request of the judges of the district, the county personnel department shall assist in the recruitment and examination of court personnel. Personnel hired or appointed as official reporters, official interpreters, staff attorneys, administrators, or other nonclerical positions on or after the effective date of this article shall serve at, and may terminated at, the pleasure of the majority of the judges of the district. Other provisions of the county civil service or personnel rules or procedures shall not be applicable to such court employees unless made applicable by local court rule. Benefits other than salary shall, for all court personnel, be the same as are now or may be hereafter be provided to equivalent county classifications, as such equivalency is determined by agreement of the majority of the judges of the district and the board, but shall not exceed those provided for equivalent county classifications. To the extent necessary, and for the sole purpose of implementing the intent

of this subdivision, court employees shall be deemed county employees for inclusion in those benefit programs provided to county employees as a group or groups. All court employees, except pro tempore court reporters shall, if otherwise eligible under statutory and retirement system membership requirements, be included in the county's retirement system.

SEC. 16.2. Section 73772 of the Government Code is amended to read:

73772. There shall be one clerk, who shall be the Court Executive Officer and receive an annual salary recommended by the courts and approved by the board of supervisors.

SEC. 16.4. Section 73773 of the Government Code is amended to read:

73773. (a) Whereas the Marin County Courts are judicially and administratively consolidated with joint job classifications, the work of the Superior and Municipal Courts in Marin County is to be performed, minimally, by each of the positions herein identified by the trial courts of Marin County. The Court Executive Officer, with the approval of the judges, may appoint the following authorized titles, number of positions, and compensation rates for employees of the Marin County Courts:

Title	No. of Positions	Biweekly Salary Scales
Assistant Court Executive Officer	1	$3,002.40
Administrative Services Officer I	1	1,777.50 to 2,146.50
Administrative Services Assistant II	1	1,582.50 to 1,913.25
Attorney IV	1	2,564.00 to 2,843.20
Attorney III	2	2,368.80 to 2,494.40
Department Fiscal Manager	1	2,094.40 to 2,534.40
Systems Support Analyst II	1	2,151.00 to 2,604.00
Computer Technician I	1	1,097.25 to 1,332.75
Family Law Facilitator	.5	2,099.20 to 2,209.60
Legal Secretary II	1	1,206.75 to 1,374.75
Senior Secretary	1	1,302.75 to 1,557.75
Probate Examiner	1	1,459.50 to 1,745.25
Judicial Support Specialist	6	1,407.00 to 1,687.50
Legal Process Clerk	10	936.75 to 1,107.75
Court Division Manager	2	2,164.00 to 2,387.20
Legal Process Supervisor	4	1,407.00 to 1,687.50
Family Law Examiner	.8	1,459.50 to 1,745.25

Senior Accounting Assistant	1	1,166.25 to 1,385.25
Accounting Assistant	4	1,010.25 to 1,196.25
Legal Process Assistant II	25.6	1,040.25 to 1,231.50
Legal Process Specialist	18	1,206.75 to 1,438.50
Senior Legal Process Assistant	4	1,206.75 to 1,438.50
Courtroom Clerk	21	1,356.75 to 1,620.75
Supervising Courtroom Clerk	2	1,392.75 to 1,670.25

(b) Other employees as the board of supervisors may approve upon the recommendation of the courts, each of whom shall receive a salary recommended by the courts and approved by the board of supervisors.

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

SEC. 16.6. Section 73775 of the Government Code is repealed.

SEC. 16.8. Section 73778 of the Government Code is repealed.

SEC. 17. Section 73778.5 of the Government Code is repealed.

SEC. 17.2. Section 73780 of the Government Code is repealed.

SEC. 17.6. Section 73785 is added to the Government Code, to read:

73785. Effective July 1, 1997, the work of the superior and municipal courts in Mendocino County is to be performed, minimally, by each of the positions herein identified by the trial courts of Mendocino County.

Number	Classification	Schedule
1	Court Executive Officer	5338 F
1	Assistant Court Executive Officer	4537 F
1	Marshal	941 F
2	Deputy Marshal	242 F
2	Court Reporter	3551 F
1	Interpreter/Coordinator	3380 F
3	Court Services Manager	2610–3172
3	Court Services Supervisor	2182–2652
10	Court Services Representative IV	1932–2352
15	Court Services Representative III	1764–2144
15	Court Services Representative II	1601–1948
4	Court Services Representative I	1417–1723
1	Judicial Secretary	2048–2489
1	Court Fiscal Manager	2899–3525

1	Court Accountant	2634–3203
1	Court Financial Hearing Officer	2128–2586
1	Account Clerk II	1568–1906
1	Account Clerk I	1417–1722
1	Research Attorney II	3416–4154
1	Court Computer System Coordinator	2516–3059
1	Drug Court Coordinator	3125–3797
1	Drug Court Case Manager	2657–3232

SEC. 17.8. Section 73794 of the Government Code is amended to read:

73794. There shall be two traffic trial commissioners who shall be appointed by a majority of the judges of the court.

SEC. 18. Section 73795 of the Government Code is repealed.

SEC. 18.2. Section 73798 of the Government Code is amended to read:

73798. There shall be in the municipal courts of Merced County the following positions, at a minimum:

(a) One assistant municipal court administrator on range 63.6.

(b) One automation systems analyst on range 59.4.

(c) Five supervising municipal court clerks I on range 54.8.

(d) Twelve courtroom clerks I/II on range 51.7.

(e) Thirty-four court processing clerks on range 50.7.

(f) One secretary III on range 54.3.

SEC. 18.4. Section 73799 of the Government Code is repealed.

SEC. 18.5. Section 73822 of the Government Code is amended to read:

73822. There is one court executive officer for the Nevada County Consolidated Courts, who shall be appointed by the judges of the court, and who shall hold office at the judges' pleasure. The court executive officer shall receive a monthly salary in the range of four thousand five hundred twenty-one dollars and thirty-one cents ($4,521.31) to five thousand four hundred ninety-five dollars and sixty-seven cents ($5,495.67).

SEC. 18.6. Section 73823 of the Government Code is amended to read:

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

	Position	Salary Range		
3	Court Services Supervisors	$2,372.10	to	$2,883.20
15	Court Services Assistants III or II	$1,624.01	to	$2,270.00
16	Court Services Assistants I and II	$1,412.58	to	$1,974.00
1	Court Accountant II or III	$2,706.43	to	$3,783.13

1	Programmer Analyst I or II or III	$2,120.56	to	$3,556.14
3	Judicial Secretaries	$1,867.53	to	$2,270.00
2	Court Reporters	$2,582.82	to	$3,141.70
1	Research Attorney II or III	$3,558.31	to	$4,918.80

SEC. 18.7. Section 73954 of the Government Code is amended to read:

73954. The court administrator may appoint:

(a) One assistant court administrator at the direction of a majority of the judges of the court who shall serve at the pleasure of the majority of the judges. The biweekly salary of the assistant court administrator shall be within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary and any advancement or reduction within the range shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator." A person shall not be appointed to the class of assistant court administrator if all three deputy court administrator positions are filled.

(b) Three deputy court administrators, who shall serve at the pleasure of the court administrator. The deputy court administrators shall receive a salary within the biweekly range ES-6 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with Article 3.5 of the Compensation Ordinance of the County of San Diego and subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall mean "the court administrator." The deputy court administrator positions shall be filled only upon the equivalent number of corresponding vacancies in the positions denoted in subdivision (c), (d), or (*l*).

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

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

(e) Ten deputy clerks V, who shall receive a salary at a rate equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities.

(f) Twenty-five deputy clerks IV, or senior deputy clerks, as the case may be. Each deputy clerk IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed three positions. Each of the senior deputy clerks shall receive a biweekly salary at a rate 5 percent higher than that specified for a deputy clerk IV. The duties of the class of senior deputy clerk shall be those of a courtroom clerk and shall include supervisory responsibilities. One deputy clerk IV who is assigned to the presiding judge in the master calendar department may receive a biweekly salary at a rate of 5 percent higher than that specified for the deputy clerk IV. This increased biweekly rate shall apply only during the period of this assignment and shall not apply to paid time off or to terminal payoff.

(g) One hundred deputy clerks III, II, or I, or deputy clerk-intermediate clerk typists as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I or II classes may be at any step within the salary range. Up to four of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of eight deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(h) One deputy clerk-municipal court secretary. A deputy clerk-municipal court secretary shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. Appointments to the

class of deputy-clerk municipal court secretary may be at any step within the salary range at the discretion of the court administrator.

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

(j) Five deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

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

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

(m) Five confidential deputy administrative clerks III, II, or I or deputy administrative clerks III, II, or I, as the case may be. A confidential deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for a deputy clerk IV. A confidential deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for a deputy clerk III. A confidential deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for a deputy clerk II. Each deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for a deputy clerk IV. Each deputy administrative clerk II shall receive a biweekly salary at a rate equal

to that specified for deputy clerk III. Each deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

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

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

(p) Two deputy clerk-research attorney I, deputy clerk-research attorney II, or deputy clerk-law clerk, as the case may be. Persons appointed to either of these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator. A deputy clerk-research attorney I shall receive a biweekly salary at a rate equal to that specified for deputy county counsel I in the classified service of the County of San Diego. A deputy clerk-research attorney II shall receive a biweekly salary at a rate equal to that specified for deputy county counsel II in the classified service of the County of San Diego. A deputy clerk-law clerk shall receive a biweekly salary at a rate equal to that specified for law clerk in the classified service of the County of San Diego.

(q) One deputy clerk-staff development specialist or deputy clerk-staff development coordinator as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

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

equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(s) Two deputy clerk-systems support analyst II or I as the case may be. A deputy clerk-systems support analyst II shall receive a biweekly salary at a rate equal to that specified for systems support analyst II in the classified service of the County of San Diego. A deputy clerk-systems support analyst I shall receive a biweekly salary at a rate equal to that specified for systems support analyst I in the classified service of the County of San Diego.

(t) Seven deputy clerk-court referral coordinators, deputy clerk referral officers II or I, as the case may be. Notwithstanding subdivision (b) of Section 73957, persons appointed to these positions shall serve at the pleasure of the court administrator. A deputy clerk-court referral coordinator shall receive a biweekly salary at a rate 7.25 percent higher to that specified for the class of deputy clerk-court referral officer II. The deputy clerk-court referral officer II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of the County of San Diego. A deputy clerk-court referral officer I shall receive a biweekly salary at a rate of 9 percent below that specified for a deputy clerk-court referral officer II. Two of the above positions shall be filled only upon the equivalent number of corresponding vacancies in the positions denoted in subdivisions (d) and (e) of Section 74359.1. Appointments to deputy clerk-court referral officer I and deputy clerk-court referral officer II may be at any step within the salary range.

(u) Two deputy clerk-municipal court computer specialist I, II, or III, as the case may be. A deputy clerk-municipal court computer specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, or III, respectively, in the classified service of the County of San Diego.

(v) One deputy clerk-data entry supervisor. A deputy clerk-data entry supervisor shall receive a biweekly salary at a rate equal to that specified for data entry supervisor in the classified service of the County of San Diego.

(w) Nine deputy clerk-data entry operators, or deputy clerk-senior data entry operators, as the case may be. A deputy clerk-data entry operator shall receive a biweekly salary at the rate equal to that specified for data entry operator in the classified service of the County of San Diego.

A deputy clerk-senior data entry operator shall receive a biweekly salary at a rate equal to that specified for senior data entry operator in the classified service of the County of San Diego. No more than five

of these positions may be filled at the deputy clerk-senior data entry operator level.

(x) Five deputy clerk-collection officers I, II, or III, as the case may be. Each deputy clerk-collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. Each deputy clerk-collection officers II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego. Each deputy clerk-collection officer III shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego. Persons appointed to this position on or after January 1, 1999, shall serve at the pleasure of the court administrator.

(y) One deputy clerk-small claims advisor or deputy clerk-small claims counsel, as the case may be. The deputy clerk-small claims advisor shall receive a biweekly salary at a rate equal to that specified for small claims advisor in the classified service of the County of San Diego. The deputy clerk-small claims counsel shall receive a biweekly salary at a rate equal to that specified for small claims counsel in the classified service of the County of San Diego.

(z) Notwithstanding subdivision (b) of Section 73957, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(aa) Notwithstanding subdivision (b) of Section 73957, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 73950 to 73960, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of these classes, the county personnel director shall conduct a classification review and make recommendations to the court administrator as to the establishment of these classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the range proposed for the class pending establishment at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment.

Appointments shall be temporary and shall not exceed 18 months in duration. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of these positions may be established by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of a majority of the judges and the board of supervisors.

(ab) Notwithstanding subdivision (b) of Section 73957, the court administrator may appoint up to 20 temporary extra help deputy clerk-municipal court trainees I, II, III, or V who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive an hourly salary at a rate equal to that specified for student worker V in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

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

(ad) Notwithstanding any other provision of law, the number of positions in classifications and compensation of positions authorized under subdivisions (b) to (y), inclusive, (aa), (ab), and (ac) and under Sections 73953, 73958, 73959, 73960, and 73960.1 may be

adjusted as necessary by action of the majority of the judges. The rules regarding appointment of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges adjusting those positions shall designate the class title or titles, number of positions, and compensation for each respective class. Any adjustment made pursuant to this subdivision shall be effective upon action of a majority of the judges and shall remain in effect until ratified by the Legislature.

SEC. 19. Section 73957 of the Government Code is repealed.

SEC. 19.2. Section 73957 is added to the Government Code, to read:

73957. (a) In addition to the salary provided in this article, the classes of attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345. The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the classification of chief probation officer of the County of San Diego. The assistant court administrator and deputy court administrators shall receive the same number of holidays, leaves of absence, and other fringe benefits as are now or hereafter received by the classification of assistant chief probation officer of the County of San Diego. All persons employed as a deputy director shall receive the same number of holidays, leaves of absence, and other fringe benefits as are now or hereafter received by the classification of probation director of the County of San Diego. All persons employed as deputy clerk-division managers III, II, and I, shall receive the same number of holidays, leaves of absence, and other fringe benefits as are now or hereafter received by the classification of administrative assistant III of the County of San Diego. However, all officers, employees, and attachés of the municipal court shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego. The purpose and intent of this subdivision is to provide all court attachés, except commissioners, court reporters, and judicial secretaries, with any and all fringe benefits but not more than those which are available to comparable classes in the classified service of the County of San Diego as specified in this section or Section 74345. Whenever action or approval by the chief administrative officer or the county personnel director is required for the county benefit, it shall be taken or given, as to comparable municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges of the municipal court or their designees, or as to the court administrator and others serving at the pleasure of the court, by a majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego

in the specified comparable classes. The majority of all the municipal court judges may adopt rules for the conduct of and personnel privileges to be afforded the attachés of the court, excluding fringe benefits.

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

SEC. 19.4. Section 73957.5 is added to the Government Code, to read:

73957.5. Any positions authorized by Section 73954 may be filled by independent contractors on a contractual basis at the discretion of the court administrator. The provisions of Section 73957 shall not apply to any of the positions authorized by Section 73954 that are filled by independent contractors on a contractual basis.

SEC. 19.6. Section 73959 of the Government Code is repealed.

SEC. 19.7. Section 73959 is added to the Government Code, to read:

73959. By order entered in the minutes of the court, a majority of judges may appoint three judicial secretaries or supervising judicial secretaries, as the case may be, who shall serve at the pleasure of the judges. The classification of supervising judicial secretary shall be limited to one position and this one position only may be authorized by joint action of a majority of the judges and the board of supervisors. The supervising judicial secretary shall receive a biweekly salary at a rate equal to that specified for the classification of confidential legal secretary III in the classified service of the County of San Diego, commencing at step 4 at initial employment and advancing to step 5 at the end of one year of continuous service. The position of supervising judicial secretary shall be deemed comparable to the position of confidential legal secretary III in the classified service of the County of San Diego commencing at step 4 at initial employment and advancing to step 5 at the end of one year of continuous service. The position of supervising judicial secretary shall be deemed comparable to the position of confidential legal secretary III in the classified service of San Diego County. Whenever the salary of the class of confidential legal secretary III is adjusted by the Board of Supervisors of San Diego County, the salary of the class of supervising judicial secretary shall be adjusted a commensurate percentage in the salary schedule on the same date. Each judicial secretary shall

receive a biweekly salary at a rate equal to that specified for administrative secretary IV in the classified service of the County of San Diego. Appointments in the class of judicial secretary may be at any step within the salary range at the discretion of the judges. The position of judicial secretary shall be deemed comparable to the position of administrative secretary IV in the classified service of San Diego County. Whenever the salary of the class of administrative secretary IV is adjusted by the Board of Supervisors of San Diego County, the salary of the class of judicial secretaries shall be adjusted a commensurate percentage in the salary schedule on the same date. Notwithstanding the provisions of subdivision (a) of Section 73957, the classifications of supervising judicial secretary and judicial secretary respectively, shall receive and be entitled to the same number of holidays, leaves of absence, retirement, and all other fringe benefits as are now or may hereafter be provided for the classifications of confidential legal secretary III and administrative secretary IV, respectively, in the classified service of the County of San Diego. However, the classifications of supervising judicial secretary and judicial secretary shall be entitled to: (a) earn sick leave credit at the rate of 5.385 percent of each hour of paid service during the pay period; (b) earn vacation credit at the rate of 5.769 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 25 working days where the employee has less than 10 years of continuous service; and (c) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period and accumulate vacation credit not to exceed 35 working days where the employee has 10 years or more of continuous service. Notwithstanding the sick leave and vacation credits indicated above, persons appointed to the positions of judicial secretary and supervising judicial secretary on or after January 1, 1993, shall be entitled to earn and accrue the same sick leave credit and vacation credit as an administrative secretary IV and confidential legal secretary III, respectively, in the classified service of the County of San Diego.

SEC. 19.9. Section 73960 of the Government Code is amended to read:

73960. (a) By order entered in the minutes of the court, a majority of judges may appoint three commissioners. However, if the board of supervisors finds that there are sufficient funds for up to two additional commissioners and adopts a resolution or resolutions to that effect, a majority of judges may appoint up to two additional commissioners. A commissioner shall serve at the pleasure of the judges and shall receive a biweekly salary equal to 80 percent of the salary of a judge of a municipal court.

(b) A commissioner shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for a chief deputy county counsel in the classified service of the County of San Diego. However,

a commissioner shall be entitled to (1) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period, and (2) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period until a commissioner has 15 years of county/court service. At that time, the commissioner will earn vacation at the same rate as chief deputy counsel with 15 years of county service.

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

SEC. 20. Section 74000 of the Government Code is amended to read:

74000. This article applies to all of the municipal courts established in the County of Orange, which are in judicial districts entitled as follows: the North Orange County Judicial District, the Central Orange County Judicial District, the West Orange County Judicial District, the Orange County Harbor Judicial District, and the South Orange County Judicial District.

Pursuant to the Lockyer-Isenberg Trial Court Funding Act of 1997 and Article 3 (commencing with Section 77200) of Chapter 13 of Title 8, the County of Orange has no obligation for the salary and benefits of commissioners, referees, officers, assistants, attachés, and other employees of the municipal courts appointed pursuant to this article. Funding for trial court operations shall be solely the responsibility of the state.

SEC. 20.2. Section 74001 of the Government Code is amended to read:

74001. There shall be the following number of judges: in the North Orange County Judicial District, 12; in the Central Orange County Judicial District, 13; in the West Orange County Judicial District, 10; in the Orange County Harbor Judicial District, eight; and in the South Orange County Judicial District, four.

SEC. 20.4. Section 74001.5 of the Government Code is amended to read:

74001.5. The judges of the Central Orange County Judicial District may appoint two court commissioners. The judges of the Orange County Harbor Judicial District may appoint two court commissioners. The judges of the North Orange County Judicial District may appoint three court commissioners. The judges of the South Orange County Judicial District may appoint five court commissioners. The judges of the West Orange County Judicial District may appoint two court commissioners.

The commissioners shall have the additional powers and duties prescribed by Section 259 of the Code of Civil Procedure. The commissioners shall possess the same qualifications as the law requires of a judge of the municipal court. The commissioners shall hold office at the pleasure of the judges and shall receive a monthly

salary in the same sum as is paid a commissioner of the Orange County Superior Court. The commissioners shall be ex officio deputy clerks of the court and shall be members of any retirement system which includes the attachés of the court. The commissioners shall not engage in the private practice of law.

SEC. 20.6. Section 74002 of the Government Code is amended to read:

74002. (a) There shall be one executive officer-municipal court for each judicial district who shall serve as the clerk and administrative officer and who shall be appointed by, and serve at the pleasure of, a majority of the judges of the court, or in the case of an equal division of the judges of the court, the senior judge of the court, and who shall receive an annual salary within salary range ML-E as determined by the Judges Personnel Committee. Commencing June 26, 1992, the salary for executive officers shall be uniform among the courts.

(b) Each executive officer-municipal court may appoint one assistant executive officer-municipal court who shall receive an annual salary as determined by the Judges Personnel Committee.

SEC. 20.8. Section 74004 of the Government Code is amended to read:

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

Class Code	Title	Salary Range	NOC	COC	WOC	OCH	SOC
0359GC	Collection Officer, MC	CA-47	0	0	1	0	1
0487SC	Data Entry Supervisor II	CD-44	0	2	0	2	0
0504GC	Office Assistant	CD-33	2	9	0	1	0
0514SC	Office Supervisor B	CD-42	1	0	0	1	0
0521SC	Office Supervisor C	CD-44	11	0	0	2	0
0523SC	Office Supervisor D	CD-46	2	9	8	5	6
0526SC	Sr. Office Supv. C/D	CD-50	4	5	5	4	3
0536GC	Office Specialist	CD-39	1	0	0	0	1
0416GC	Data Entry Tech., MC	CD-37;S/3	0	11	0	10	6
0414GC	Data Entry Specialist, MC	CD-39;S/2	0	2	0	0	0
0566GC	Judicial Secretary I, MC	CD-40;S/2	0	3	0	1	0
0569GC	Judicial Secretary II, MC	CD-44	2	0	0	1	1
0570GC	Executive Secretary, MC	CD-48	1	2	2	1	2
0439GC	Secretary II, MC	CD-40	0	1	1	0	0
0442GC	Secretary III, MC	CD-44	0	0	0	0	0
0705GC	Deputy Clerk I, MC	CD-35;S/5	0	0	0	0	0
0708GC	Deputy Clerk II, MC	CD-35;S/3	0	0	0	0	0
0709GC	Court Processing Specialist II	CD-39	96	72	81	62	65
0711SC	Deputy Clerk III, MC	CD-40	0	0	0	0	0
0712GC	Judicial Assistant, MC	CD-52	2	2	1	1	1
0713SC	Senior Judicial Assistant, MC	CD-54	1	1	1	1	1
0721SC	Sr. Courtroom Clerk, MC	CS03	2	2	2	2	2
0725MD	Division Manager II, MC	CE-58	6	5	5	6	5

Class Code	Title	Salary Range	NOC	COC	WOC	OCH	SOC
0740GC	Staff Development Spec., MC	CA-56	0	1	1	0	1
0741GC	Electronic Recording Monitor	CD-37	0	0	0	0	0
0742GC	Certified Court Interpreter, MC	CA-50	0	0	2	2	0
0745GC	Courtroom Clerk, MC	CS02	29	28	23	16	16
2381MC	MC Judicial Hearing Officer	CE-65	0	2	0	0	0
2387MC	Traffic Trial Commissioner	2387-F	1	0	0	0	1
7509GC	Detention Release Officer	CA-57;S/3	0	8	0	0	0
7510GC	Sr. Detention Release Officer	CA-59	0	6	0	0	0
7511SC	Supvs. Detention Release Officer	CA-63	0	1	0	0	0
7904	Info. Systems Trainee II	CA-49	0	0	0	0	0
7939SC	Sr. Technical Systems Specialist	CA-72	0	1	0	0	1
7906GC	Technical Systems Specialist	CA-69	1	0	2	0	1
7918GC	Info. Systems Tech., MC	CA-57	0	6	1	1	3
0454GC	Systems/Prog. Analyst I, MC	CA-62	1	1	0	3	2
7922GC	Systems/Prog. Analyst II, MC	CA-66	2	1	0	1	2
0729SC	Sr. Systems/Prog. Analyst, MC	CA-72	1	1	1	0	0
7971MC	Information Systems Manager	CML-06	0	1	0	0	0
8005MC	Sr. Staff Analyst	CML-5	2	2	2	3	3
8449MC	ASA Municipal Court	CE-63	0	1	0	0	2

Class Code	Title	Salary Range	NOC	COC	WOC	OCH	SOC
8542GC	Staff Assistant.....	CA-47	1	4	0	0	1
8543GC	Staff Specialist.....	CA-55	0	0	1	1	1
7807GC	Accountant/Auditor II	CA-54	1	0	0	0	0
0905GC	Store Clerk.....	CH-07	0	0	0	1	0
7810SC	Sr. Accountant/ Auditor I.....	CA-58	0	0	0	1	0
0823SC	Sr. Accounting Office Supervisor I.....	CD-50	0	0	0	0	1
1933GC	Sr. A/E Project Manager.....	CA-70	0	0	0	0	1
	TOTAL.....		170	190	141	129	130

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

(c) To achieve the legislative intent expressed in subdivisions (a) and (b), the municipal courts of Orange County may create a personnel committee consisting of five judges selected one from each court by a majority vote of the judges of the respective courts, or where there is an equal division of the judges of a court, by the senior judge of that court. The personnel committee may adopt rules and regulations providing for a personnel system for all municipal courts of Orange County which may provide for similar treatment for employees and attachés of the several courts as is provided for Orange County employees generally, provided the rules and regulations are not contrary to, or inconsistent with, the obligations and duties of the court as specified in Chapter 2.1 (commencing with Section 68650) of Title 8, as added by Chapter 857 of the Statutes of 1997, and Rules 2201 to 2210, inclusive, of the California Rules of Court.

(d) As otherwise provided for by law, if an increase in the business of the court or any other emergency requires a greater number of attachés or employees for the prompt and faithful discharge of the business of the court than the number expressly provided in this article or requires the performance of duties of positions in a class not expressly provided in this article, a majority of the judges of the municipal courts may establish additional titles, pay rates, and positions as they deem necessary for the performance of the duties and exercise of the powers conferred by law upon the courts. Rates of compensation of other officers, attachés, and employees may be set by a majority of the municipal court judges of Orange County.

SEC. 21. Section 74005 of the Government Code is amended to read:

74005. The schedule of biweekly salary ranges referred to in Sections 74002 and 74004 are those ranges set forth in the Personnel and Salary Resolution adopted by the Orange County Board of Supervisors.

Notwithstanding any other provisions of law, the salaries of municipal court officers, attachés, and employees may, upon the approval of a majority of the judges of the municipal courts, be increased or decreased in order to provide compensation that is comparable to county employees of similar qualifications and experience holding equal or comparable positions in the Orange County classified service as the comparability is determined.

Pursuant to the Lockyer-Isenberg Trial Court Funding Act of 1997 and Article 3 (commencing with Section 77200) of Chapter 13 of Title 8, the County of Orange has no obligation for the salary and benefits of referees, officers, assistants, attachés, and other employees of the municipal courts appointed pursuant to this section. Funding for trial court operations shall be solely the responsibility of the state.

SEC. 22. Section 74006 of the Government Code is repealed.

SEC. 23. Section 74344 of the Government Code is amended to read:

74344. The court administrator may appoint:

(a) One assistant court administrator, with the consent of a majority of the judges of the court, who shall be empowered to act in the place and stead of the court administrator in the event that the court administrator is absent or unavailable for any reason. Persons appointed to this position on or after January 1, 1991, shall serve at the pleasure of the court administrator. The assistant court administrator shall receive a biweekly salary within the biweekly rate range ES-12 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

(b) Four deputy court administrators, with the consent of a majority of the judges of the court, one of whom shall be empowered to act in the place and stead of the assistant court administrator in the event that the assistant court administrator is absent or unavailable for any reason. Persons appointed to these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator. A deputy court administrator shall receive a salary within the biweekly rate range ES-10 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

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

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

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

(f) One deputy clerk V or deputy clerk-division manager I may be designated as calendar coordinator by the court administrator and shall receive a bonus of 10 percent or 5 percent, respectively.

(g) Sixty-seven deputy clerk-senior deputy clerks or deputy clerks IV, as the case may be. A deputy clerk IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerks in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III. The class of senior deputy clerk shall not exceed 20 positions. A senior deputy clerk shall receive a biweekly salary at a rate 5 percent higher than that specified for deputy clerk IV. The duties of the class of senior deputy clerk shall include supervisory responsibilities or special assignments.

(h) Two hundred twenty-three deputy clerks III, II, or I, deputy clerk-intermediate clerk typists, or deputy clerk-junior typist as the case may be. Each deputy clerk III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each deputy clerk II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each deputy clerk I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. Appointments to deputy clerks I and II may be at any step within the salary range at the discretion of the court administrator. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. A deputy clerk-junior clerk typist shall receive a biweekly salary at a rate equal to that specified for junior clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of 15 deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

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

(j) Eleven deputy clerk-court interpreters, each of whom shall receive a biweekly salary at a rate equal to that specified for superior court clerk interpreter in the superior court service of the County of San Diego.

(k) One deputy clerk-senior staff interpreter who shall receive a biweekly salary at a rate equal to that specified for deputy clerk V.

(*l*) One deputy clerk-municipal court secretary who shall receive a biweekly salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

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

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

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

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

County of San Diego. A deputy clerk-senior systems analyst shall receive a biweekly salary at a rate equal to that specified for senior systems analyst in the classified service of the County of San Diego. A deputy clerk-associate systems analyst shall receive a biweekly salary at a rate equal to that specified for associate systems analyst in the classified service of the County of San Diego. A deputy clerk-assistant systems analyst shall receive a biweekly salary at a rate equal to that specified for assistant systems analyst in the classified service of the County of San Diego. A deputy clerk-systems analyst trainee shall receive a biweekly salary at a rate equal to that specified for systems analyst trainee in the classified service of the County of San Diego.

(q) Three deputy clerk-LAN systems supervisors or deputy clerk-LAN systems analysts III, II, or I, as the case may be. A deputy clerk-LAN systems supervisor shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems supervisor in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst III shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst III in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst II shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst II in the classified service of the County of San Diego. A deputy clerk-LAN systems analyst I shall receive a biweekly salary at a rate equal to that specified for DIS LAN systems analyst I in the classified service of the County of San Diego.

(r) Two deputy clerk-research attorneys IV, or III, as the case may be. A deputy clerk-research attorney IV shall receive a biweekly salary at a rate equal to that specified for deputy county counsel IV in the classified service of the County of San Diego. A deputy clerk-research attorney III shall receive a biweekly salary at a rate equal to that specified for deputy county counsel III in the classified service of the County of San Diego. Notwithstanding subdivision (b) of Section 74348, persons appointed to these positions on or after January 1, 1991, shall serve at the pleasure of the court administrator.

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

(t) Three deputy clerk-legal assistants II or I, as the case may be. A deputy clerk-legal assistant II shall receive a biweekly salary at a

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

(u) Notwithstanding subdivision (b) of Section 74348, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Section 74345 pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of these classes, the county personnel director shall conduct a classification review and make recommendations to the court administrator as to the establishment of these classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the designated range at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed 18 months in duration. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When an appointment is made, the class, compensation (including salary and fringe benefits), and number of these positions may be established by joint action of a majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that a person serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire no later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of a majority of the judges and the board of supervisors.

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

(w) Notwithstanding subdivision (b) of Section 74348, up to 22 extra help positions (hourly rate) may be appointed by and serve at the pleasure of the court administrator in the class and at the salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period not to exceed six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with persons employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(x) Notwithstanding subdivision (b) of Section 74348, the court administrator may appoint up to 38 temporary extra help deputy clerk-municipal court trainees V, III, II, or I who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee V shall receive an hourly salary at a rate equal to that specified for student worker V in the service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the service of the County of San Diego. A deputy clerk-municipal court trainee I shall receive a biweekly salary at a rate equal to that specified for student worker I in the service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for a period not to exceed six months from the first day of the month following their date of graduation.

(y) Twelve confidential deputy administrative clerks III, II, I or deputy administrative clerks III, II, or I, as the case may be. A confidential deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. A confidential deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A confidential deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II. A deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. A deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

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

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

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

(ab) Two deputy clerk-staff development coordinators or staff development specialists, as the case may be. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego.

(ac) One deputy clerk-court collection officer III who shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego. Persons appointed to these positions on or after January 1, 1999, shall serve at the pleasure of the court administrator. Appointments to deputy clerk-court collection officers III may be at any step within the salary range.

(ad) Five deputy clerk-court collection officers II or I, as the case may be. A deputy clerk-court collection officer II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the classified service of the County of San Diego. A deputy clerk-court collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. Persons appointed to these positions on or after January 1, 1999, shall serve at the pleasure of the court administrator. Appointments to deputy

clerk-court collection officers II or I may be at any step within the salary range.

(ae) Eleven deputy clerk-court referral coordinators, deputy clerk-court referral officers II or I, as the case may be. A deputy clerk-court referral coordinator shall receive a biweekly salary at a rate 7.25 percent higher to that specified for the class of deputy clerk-court referral officer II. A deputy clerk-court referral officer II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of San Diego County. A deputy clerk-court referral officer I shall receive a biweekly salary at a rate 9 percent below that specified for the class of deputy probation officer in the classified service of San Diego County. Persons appointed to these positions on or after January 1, 1999, shall serve at the pleasure of the court administrator. Three of the above positions shall be filled only upon the equivalent number of corresponding vacancies in the positions denoted in Section 74359.1, subdivisions (d) and (e). Appointments to deputy clerk-court referral coordinator, deputy clerk-court referral officer II or I may be at any step within the salary range.

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

(ag) Notwithstanding any other provision of law, the number of positions and compensation of positions in classifications authorized under subdivisions (a) to (v), inclusive, and (x) to (af), inclusive, of this section and Sections 74343, 74346, 74349, 74352, and 74359.1 may be adjusted as necessary by action of a majority of the judges. The rules regarding appointment of persons to the positions shall be the same as those applicable to the class of those positions. The action of a majority of the judges adjusting those positions shall designate the class title or titles, number of positions, and compensation for each respective class. Any adjustment made pursuant to this subdivision shall be effective upon action of a majority of the judges and shall remain in effect until ratified by the Legislature.

(ah) Positions authorized under Section 74344 may be filled by independent contractors on a contractual basis with the approval of the court administrator. Should any of the positions be filled by independent contractors on a contractual basis, Section 74345 or 74348 shall not apply for these positions only.

SEC. 23.2. Section 74345 of the Government Code is amended to read:

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

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

Municipal Court Class	County Class
Deputy clerk-principal division manager III	Legal procedures clerk III
Deputy clerk-division manager III	Legal procedures clerk III
Deputy clerk-division manager II	Legal procedures clerk III
Deputy clerk-division manager I	Legal procedures clerk III
Deputy clerk-intermediate clerk typist	Intermediate clerk typist
Deputy clerk-junior clerk typist	Junior clerk typist
Deputy clerk V	Legal procedures clerk III
Senior deputy clerk	Legal procedures clerk III

Deputy clerk IV	Legal procedures clerk III
Deputy clerk III	Legal procedures clerk III
Deputy clerk II	Legal procedures clerk II
Deputy clerk I	Legal procedures clerk I
Deputy confidential administrative clerk III	Legal procedures clerk III
Deputy confidential administrative clerk II	Legal procedures clerk III
Deputy confidential administrative administrative clerk I	Legal procedures clerk II
Deputy administrative clerk III	Legal procedures clerk III
Deputy administrative clerk II	Legal procedures clerk III
Deputy administrative clerk I	Legal procedures clerk II
Deputy clerk-municipal court personnel officer	Departmental personnel officer III
Deputy clerk-personnel officer II	Departmental personnel officer II
Deputy clerk-personnel officer I	Departmental personnel officer I
Deputy clerk-data entry supervisor	Data entry supervisor
Deputy clerk-senior data entry operator	Senior data entry operator
Deputy clerk-data entry operator	Data entry operator
Deputy clerk-interpreter coordinator	Legal procedures clerk III
Deputy clerk-senior interpreter	Legal procedures clerk III
Deputy clerk-interpreter supervisor	Legal procedures clerk III
Deputy clerk-court interpreter	Legal procedures clerk III
Deputy clerk-administrative secretary IV	Administrative secretary IV
Deputy clerk-administrative secretary III	Administrative secretary III
Deputy clerk-administrative secretary II	Administrative secretary II
Deputy clerk-administrative secretary I	Administrative secretary I
Deputy clerk-municipal court secretary	Confidential legal secretary III
Deputy clerk-administrative assistant III	Administrative assistant III

Deputy clerk-administrative assistant II	Administrative assistant II
Deputy clerk-administrative assistant I	Administrative assistant I
Deputy clerk-administrative assistant trainee	Administrative assistant trainee
Deputy clerk-staff development specialist	Staff development specialist
Deputy clerk-staff development coordinator	Staff development specialist
Deputy clerk-principal systems analyst	Principal systems analyst
Deputy clerk-senior systems analyst	Senior systems analyst
Deputy clerk-associate systems analyst	Associate systems analyst
Deputy clerk-assistant systems analyst	Assistant systems analyst
Deputy clerk-systems analyst trainee	Systems analyst trainee
Deputy clerk-systems support analyst II	Systems support analyst II
Deputy clerk-systems support analyst I	Systems support analyst I
Deputy clerk-systems support analyst trainee	Systems support analyst trainee
Deputy clerk-LAN systems analyst I	DIS LAN systems analyst I
Deputy clerk-LAN systems analyst II	DIS LAN systems analyst II
Deputy clerk-LAN systems analyst III	DIS LAN systems analyst III
Deputy clerk-LAN systems supervisor	DIS LAN systems supervisor
Deputy clerk-municipal court computer specialist I	Department computer specialist I
Deputy clerk-municipal court computer specialist II	Departmental computer specialist II
Deputy clerk-municipal court computer specialist III	Departmental computer specialist III
Deputy clerk-accounting manager	Legal procedures clerk III
Deputy clerk-senior accountant	Senior accountant
Deputy clerk-associate accountant	Associate accountant

Deputy clerk-assistant accountant	Assistant accountant
Deputy clerk-junior accountant	Junior accountant
Deputy clerk-law clerk	Law clerk
Deputy clerk-research attorney I	Deputy county counsel I
Deputy clerk-research attorney II	Deputy county counsel II
Deputy clerk-research attorney III	Deputy County Counsel III
Deputy clerk-research attorney IV	Deputy county counsel IV
Deputy clerk-legal assistant I	Legal assistant I
Deputy clerk-legal assistant II	Legal assistant II
Deputy clerk-administrative services manager I	Administrative services manager I
Deputy clerk-administrative services manager II	Administrative services manager II
Deputy clerk-administrative services manager III	Administrative services manager III
Deputy clerk-principal administrative analyst	Principal administrative analyst
Deputy clerk-analyst trainee	Analyst trainee
Deputy clerk-analyst I	Analyst I
Deputy clerk-analyst II	Analyst II
Deputy clerk-analyst III	Analyst III
Deputy clerk-substance abuse assessor I	Deputy probation officer
Deputy clerk-substance abuse assessor II	Deputy probation officer
Deputy clerk—court referral coordinator	Deputy probation officer
Deputy clerk-court referral officer II	Deputy probation officer
Deputy clerk-court referral officer I	Deputy probation officer
Deputy clerk-domestic violence counselor	Deputy probation officer
Deputy clerk-court collection officer I	Revenue and recovery officer I
Deputy clerk-court collection officer II	Revenue and recovery officer II
Deputy clerk-court collection officer III	Revenue and recovery officer III
Deputy clerk-pretrial services manager	Deputy probation officer

Deputy clerk-supervising pretrial services officer	Deputy probation officer
Deputy clerk-pretrial services officer	Deputy probation officer
Deputy clerk-volunteer program coordinator	Legal procedures clerk III
Deputy clerk—small claims advisor	Small claims advisor
Deputy clerk—small claims counsel	Small claims counsel

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

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

(d) Officers and attachés may be appointed to a class and position in the service of a court in one judicial district from the service of a court in another judicial district within the County of San Diego, from the service of the County of San Diego, from the service of the Superior Court of the County of San Diego, or from the service of the marshal, in the same manner that employees of the County of San Diego may be appointed in departments of the county. In determining the step of the salary range at which such employee shall be paid, the employee shall be given credit for the immediately preceding continuous prior service to a court, the marshal, or the County of San Diego.

(e) A promotion is an appointment to a class compensated at a higher base salary, at any like-numbered step, than the class relinquished. Upon promotion, an employee shall be placed at the

lowest step which provides at least a 5-percent increase over the base salary of the step occupied in the former class, but in no event higher than the top step of the class to which promoted.

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

SEC. 23.4. Section 74346 of the Government Code is amended to read:

74346. (a) There shall be eight commissioners who shall hold office at the pleasure of the judges. A commissioner shall receive a salary equal to 80 percent of the salary of a judge of the municipal court.

(b) A commissioner shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for a chief deputy county counsel in the classified service of the County of San Diego. However, a commissioner shall be entitled to (1) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period; and (2) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period.

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

SEC. 23.5. Section 74355 of the Government Code is amended to read:

74355. This article applies jointly to the four municipal courts established in this chapter as the El Cajon Judicial District, North County Judicial District, San Diego Judicial District, and South Bay Judicial District for purposes of establishing positions, and compensation for these positions, for the San Diego County Pretrial Services Unit.

SEC. 23.6. Section 74356 of the Government Code is repealed.

SEC. 23.7. Section 74357 of the Government Code is repealed.

SEC. 23.8. Section 74358 of the Government Code is repealed.

SEC. 23.9. Section 74359 of the Government Code is repealed.

SEC. 24. Section 74368 of the Government Code is amended to read:

74368. The marshal may make the following appointments:

(a) One assistant marshal.

(b) Four captains.

(c) Five lieutenants.

(d) Twenty sergeants.

(e) One hundred ninety-two deputy marshals.

Any deputy marshal who may be assigned by the marshal to one of 10 positions designated as lead deputy shall receive, while serving in that capacity, biweekly compensation at a rate 5 percent higher than that received by the deputy.

The marshal may, at his or her discretion, fill a deputy marshal or court service officer position by accepting a lateral transfer from another California peace officer agency. The transferee shall have completed a California P.O.S.T. certified basic academy and been employed for at least one year in a position enumerated in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code within the past three years.

(f) One administrative secretary I, II, or III.

(g) One administrative services manager I, II, or III or administrative assistant III.

(h) One accounting technician.

(i) Two senior typists.

(j) Thirty-five field service officers.

Notwithstanding any other provisions of this article, in no event shall a field service officer's salary be less than 65 percent of the salary of a deputy marshal at the corresponding pay step. The field service officer is a peace officer trainee position which requires appointees to be at least 18 years of age and meet the qualifications and standards prescribed for deputy marshals. At the time an incumbent in the class of field service officer attains the age of 21, he or she may be appointed by the marshal to a position in the class of deputy marshal or court service officer, provided such position is open, without further qualification or examination.

A field service officer shall receive 65 percent of the uniform allowance prescribed for deputy marshals. In the event that a field service officer is appointed to the class of deputy marshal or court service officer, he or she shall receive the amount of reimbursement of the cost of required uniforms and equipment prescribed for a newly hired deputy marshal or court service officer, less any reimbursement received by him or her for the cost of required field service officer uniforms and equipment.

(k) One departmental computer specialist I, II, or III.

(*l*) Nine legal procedures clerks III.

(m) Forty-three legal procedures clerks II or I.

(n) One hundred five court service officers. In no event shall a court service officer's salary be less than 80 percent of a deputy marshal at the corresponding pay step. A court service officer shall receive the same uniform allowance prescribed for a deputy marshal, under the same conditions prescribed for deputy marshals. The marshal may appoint a court service officer to a vacant position of deputy marshal without further qualification or examination. In the event that a court service officer is appointed to the class of deputy

marshal, he or she shall receive the amount of reimbursement prescribed for a newly hired deputy marshal, less any reimbursement received by him or her for the cost of required court service officer uniforms and equipment. Court service officers shall be peace officers pursuant to Section 830.36 of the Penal Code. Notwithstanding any other provision of law, court service officers shall be general members of the county employees retirement system.

Any court service officer who meets length of service, educational and performance requirements established by the marshal and approved by the county personnel director may receive a biweekly compensation at a rate $7^1/_2$ percent higher than that otherwise received by a court service officer.

(o) Any person specified in subdivision (f) or (i), who may be assigned by the marshal to one of the positions designated as executive secretary or administrative-personnel secretary shall receive, while serving in that capacity, biweekly compensation at a rate 10 percent higher than that specified for such person's class and step.

(p) Two supervising legal services clerks.

(q) Three marshal's radio trainees or emergency services dispatchers.

(r) Two administrative assistants III, II, I, or trainee.

(s) Two senior systems analysts or senior applications engineers.

(t) Notwithstanding Section 74369, up to 15 extra help positions (hourly rate) to be appointed at a level as determined by and serve at the pleasure of the marshal. Such appointments shall be temporary for a period not to exceed six months, plus one additional period at the marshal's option, not to exceed six months. Notwithstanding any other provisions of this section, the marshal may fill these positions with persons employed for less than 121 working days during a fiscal year on a part-time basis.

(u) Notwithstanding Section 74369, the marshal may appoint up to six temporary extra help marshal student workers I, II, or III who shall be paid at an hourly rate and shall serve at the pleasure of the marshal. A marshal student worker I, II, or III shall receive an hourly salary at the rate equal to that specified for the class of student worker I, II, or III respectively in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a marshal student worker class may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(v) Two associate systems analysts or assistant systems analysts or applications engineers I or II.

(w) Notwithstanding Section 74369, up to five provisional workers may be appointed by and serve at the pleasure of the marshal. The class of provisional worker provides for temporary appointments to

positions in classes not listed in Section 74370 pending a review and evaluation of the duties of these positions by the marshal, and the establishment of specific classes as provided in this subdivision. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the marshal as to the establishment of such classes. The rate of pay for each individual employed in this class of provisional worker shall be within the range proposed for the class pending establishment, at a rate determined by the marshal following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to provisional workers shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the marshal and the board of supervisors in accordance with established county personnel and budgetary procedures. The marshal may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying provisional worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the marshal and the board of supervisors.

(x) One departmental LAN analyst III.

(y) One EDP systems manager.

(z) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (s), inclusive, (u), (v), (w), (x), and (y) of this section may be increased by up to 100 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature.

SEC. 24.5. Section 74368 of the Government Code is amended to read:

74368. The marshal may make the following appointments:

(a) One assistant marshal.

(b) Four captains.

(c) Five lieutenants.

(d) Twenty sergeants.

(e) One hundred ninety-two deputy marshals.

Any deputy marshal who may be assigned by the marshal to one of 10 positions designated as lead deputy shall receive, while serving in that capacity, biweekly compensation at a rate 5 percent higher than that received by the deputy.

The marshal may, at his or her discretion, fill a deputy marshal or court service officer position by accepting a lateral transfer from another California peace officer agency. The transferee shall have completed a California P.O.S.T. certified basic academy and been employed for at least one year in a position enumerated in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code within the past three years.

(f) One administrative secretary I, II, or III.

(g) One administrative services manager I, II, or III or administrative assistant III.

(h) One accounting technician.

(i) Two senior typists.

(j) Thirty-five field service officers.

Notwithstanding any other provisions of this article, in no event shall a field service officer's salary be less than 65 percent of the salary of a deputy marshal at the corresponding pay step. The field service officer is a peace officer trainee position which requires appointees to be at least 18 years of age and meet the qualifications and standards prescribed for deputy marshals. At the time an incumbent in the class of field service officer attains the age of 21, he or she may be appointed by the marshal to a position in the class of deputy marshal or court service officer, provided such position is open, without further qualification or examination.

A field service officer shall receive 65 percent of the uniform allowance prescribed for deputy marshals. In the event that a field service officer is appointed to the class of deputy marshal or court service officer, he or she shall receive the amount of reimbursement of the cost of required uniforms and equipment prescribed for a newly hired deputy marshal or court service officer, less any reimbursement received by him or her for the cost of required field service officer uniforms and equipment.

(k) One departmental computer specialist I, II, or III.

(*l*) Nine legal procedures clerks III.

(m) Forty-three legal procedures clerks II or I.

(n) One hundred five court service officers. In no event shall a court service officer's salary be less than 80 percent of a deputy

marshal at the corresponding pay step. A court service officer shall receive the same uniform allowance prescribed for a deputy marshal, under the same conditions prescribed for deputy marshals. The marshal may appoint a court service officer to a vacant position of deputy marshal without further qualification or examination. In the event that a court service officer is appointed to the class of deputy marshal, he or she shall receive the amount of reimbursement prescribed for a newly hired deputy marshal, less any reimbursement received by him or her for the cost of required court service officer uniforms and equipment. Court service officers shall be peace officers pursuant to Section 830.36 of the Penal Code. Notwithstanding any other provision of law, court service officers shall be safety members of the county employees retirement system.

(o) Any person specified in subdivision (f) or (i), who may be assigned by the marshal to one of the positions designated as executive secretary or administrative-personnel secretary shall receive, while serving in that capacity, biweekly compensation at a rate 10 percent higher than that specified for such person's class and step.

(p) Two supervising legal services clerks.

(q) Three marshal's radio trainees or emergency services dispatchers.

(r) Two administrative assistants III, II, I, or trainee.

(s) Two senior systems analysts or senior applications engineers.

(t) Notwithstanding Section 74369, up to 15 extra help positions (hourly rate) to be appointed at a level as determined by and serve at the pleasure of the marshal. Such appointments shall be temporary for a period not to exceed six months, plus one additional period at the marshal's option, not to exceed six months. Notwithstanding any other provisions of this section, the marshal may fill these positions with persons employed for less than 121 working days during a fiscal year on a part-time basis.

(u) Notwithstanding Section 74369, the marshal may appoint up to six temporary extra help marshal student workers I, II, or III who shall be paid at an hourly rate and shall serve at the pleasure of the marshal. A marshal student worker I, II, or III shall receive an hourly salary at the rate equal to that specified for the class of student worker I, II, or III respectively in the unclassified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a marshal student worker class may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

(v) Two associate systems analysts or assistant systems analysts or applications engineers I or II.

(w) Notwithstanding Section 74369, up to five provisional workers may be appointed by and serve at the pleasure of the marshal. The class of provisional worker provides for temporary appointments to

positions in classes not listed in Section 74370 pending a review and evaluation of the duties of these positions by the marshal, and the establishment of specific classes as provided in this subdivision. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the marshal as to the establishment of such classes. The rate of pay for each individual employed in this class of provisional worker shall be within the range proposed for the class pending establishment, at a rate determined by the marshal following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to provisional workers shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed six months. Employee benefits, if applicable, shall be equal to those granted to the class in the service of the County of San Diego to which the pending class will be tied for benefit purposes. When such an appointment is made, the class, compensation (including salary and fringe benefits), and number of such positions may be established by joint action of the marshal and the board of supervisors in accordance with established county personnel and budgetary procedures. The marshal may then appoint additional attachés to such classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying provisional worker positions shall have their appointments expire not later than 30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the marshal and the board of supervisors.

(x) One departmental LAN analyst III.

(y) One EDP systems manager.

(z) Notwithstanding any other provision of law, the number of positions in classifications authorized under subdivisions (b) to (s), inclusive, (u), (v), (w), (x), and (y) of this section may be increased by up to 100 additional positions by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. The rules regarding appointment and compensation (including salary and fringe benefits) as they relate to appointments of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges and the resolution of the board of supervisors adjusting those positions shall designate the class title or titles and number of positions to be added to each respective class. Any adjustment made pursuant to this subdivision shall be effective on adoption of the resolution by the board of supervisors and shall remain in effect only until January 1 of the second year following the year in which this subdivision becomes effective, unless earlier ratified by the Legislature.

SEC. 25. Section 74370 of the Government Code is amended to read:

74370. (a) The hereinafter enumerated classes of positions in the marshal's office of San Diego County are deemed to be equivalent in job, salary level, and fringe benefit level to certain classes in the service of the County of San Diego and whenever the salary and fringe benefit level of a class in the service of the County of San Diego is adjusted by the board of supervisors, the salary and fringe benefit level of the equivalent class in the marshal's office shall be adjusted in the same amount, effective on the same date.

The equivalent classes are as follows:

Marshal class	County class
Assistant marshal	Assistant sheriff
Captain	Deputy sheriff—captain
Lieutenant	Deputy sheriff—lieutenant
Sergeant	Deputy sheriff—sergeant
Deputy marshal	Deputy sheriff
Court service officer	Revenue and recovery officer II
Field service officer	Revenue and recovery officer trainee
Legal procedures clerk III	Legal procedures clerk III
Legal procedures clerk II	Legal procedures clerk II
Legal procedures clerk I	Legal procedures clerk I
Senior typist	Senior clerk-typist
Administrative assistant III	Administrative assistant III
Administrative assistant II	Administrative assistant II
Administrative assistant I	Administrative assistant I
Administrative trainee	Administrative trainee
Accounting technician	Accounting technician
Senior systems analyst	Senior systems analyst
Associate systems analyst	Associate systems analyst
Assistant systems analyst	Assistant systems analyst
Department computer specialist III	Department computer specialist III
Department computer specialist II	Department computer specialist II
Department computer specialist I	Department computer specialist I
Senior applications engineer	Senior applications engineer
Applications engineer I	Applications engineer I
Applications engineer II	Applications engineer II

Administrative secretary III	Administrative secretary III
Administrative secretary II	Administrative secretary II
Administrative secretary I	Administrative secretary I
Administrative services manager I	Administrative services manager
Administrative services manager II	Administrative services manager
Administrative services manager III	Administrative services manager
Supervising legal services clerk	Supervising legal services clerk
Radio trainee	Radio trainee
Emergency services dispatcher	Emergency services dispatcher
Departmental LAN Analyst III	Departmental LAN Analyst III
EDP Systems Manager	EDP Systems Manager

(b) In addition to the salary provided in this article, officers, deputies, and other attachés of the marshal's office shall receive, and they shall be entitled to, the same number of holidays, leaves of absence, retirement benefits, deferred compensation benefits, and all other fringe benefits as are now or may hereafter be provided for the specified comparable employees of the County of San Diego.

For purposes of providing the fringe benefits specified in this section, each class in the marshal's office shall receive benefits equal to those of the comparable class in the service of the County of San Diego as specified in this section. The marshal shall receive the same fringe benefits received by the classification of Chief Probation Officer of the County of San Diego. However, all officers, deputies, and other attachés of the marshal's office shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all marshal's personnel with any and all fringe benefits, but no more than those, which are available to their comparable classes in the service of the County of San Diego, as specified in this section. Whenever action or approval by the chief administrative officer or the county personnel director is required for a county benefit, it shall be taken or given as to comparable marshal's employees, by the marshal, or as to the marshal by the majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The marshal may adopt rules for the conduct of, and personnel privileges to be afforded to, marshal employees, excluding fringe benefits.

SEC. 25.5. Section 74370 of the Government Code is amended to read:

74370. (a) The hereinafter enumerated classes of positions in the marshal's office of San Diego County are deemed to be equivalent in job, salary level, and fringe benefit level to certain classes in the service of the County of San Diego and whenever the salary and fringe benefit level of a class in the service of the County of San Diego is adjusted by the board of supervisors, the salary and fringe benefit level of the equivalent class in the marshal's office shall be adjusted in the same amount, effective on the same date.

The equivalent classes are as follows:

Marshal class	County class
Assistant marshal	Assistant sheriff
Captain	Deputy sheriff–captain
Lieutenant	Deputy sheriff–lieutenant
Sergeant	Deputy sheriff–sergeant
Deputy marshal	Deputy sheriff
Court service officer	Corrections deputy sheriff
Field service officer	Revenue and recovery officer trainee
Legal procedures clerk III	Legal procedures clerk III
Legal procedures clerk II	Legal procedures clerk II
Legal procedures clerk I	Legal procedures clerk I
Senior typist	Senior clerk-typist
Administrative assistant III	Administrative assistant III
Administrative assistant II	Administrative assistant II
Administrative assistant I	Administrative assistant I
Administrative trainee	Administrative trainee
Accounting technician	Accounting technician
Senior systems analyst	Senior systems analyst
Associate systems analyst	Associate systems analyst
Assistant systems analyst	Assistant systems analyst
Department computer specialist III	Department computer specialist III
Department computer specialist II	Department computer specialist II
Department computer specialist I	Department computer specialist I
Senior applications engineer	Senior applications engineer
Applications engineer I	Applications engineer I
Applications engineer II	Applications engineer II

Administrative secretary III	Administrative secretary III
Administrative secretary II	Administrative secretary II
Administrative secretary I	Administrative secretary I
Administrative services manager I	Administrative services manager
Administrative services manager II	Administrative services manager
Administrative services manager III	Administrative services manager
Supervising legal services clerk	Supervising legal services clerk
Radio trainee	Radio trainee
Emergency services dispatcher	Emergency services dispatcher
Departmental LAN Analyst III	Departmental LAN Analyst III
EDP Systems Manager	EDP Systems Manager

(b) In addition to the salary provided in this article, officers, deputies, and other attachés of the marshal's office shall receive, and they shall be entitled to, the same number of holidays, leaves of absence, retirement benefits, deferred compensation benefits, and all other fringe benefits as are now or may hereafter be provided for the specified comparable employees of the County of San Diego.

For purposes of providing the fringe benefits specified in this section, each class in the marshal's office shall receive benefits equal to those of the comparable class in the service of the County of San Diego as specified in this section. The marshal shall receive the same fringe benefits received by the classification of Chief Probation Officer of the County of San Diego. However, all officers, deputies, and other attachés of the marshal's office shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all marshal's personnel with any and all fringe benefits, but no more than those, which are available to their comparable classes in the service of the County of San Diego, as specified in this section. Whenever action or approval by the chief administrative officer or the county personnel director is required for a county benefit, it shall be taken or given as to comparable marshal's employees, by the marshal, or as to the marshal by the majority of the judges or their designees. Changes in fringe benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The marshal may adopt rules for the conduct of, and personnel privileges to be afforded to, marshal employees, excluding fringe benefits.

SEC. 26. Section 74603 of the Government Code is amended to read:

74603. There shall be one commissioner of the San Luis Obispo County Municipal Court, who shall be appointed by the presiding judge with the concurrence of a majority of the judges of the court, and shall hold office at the pleasure of a majority of the judges. The commissioner shall possess the same qualifications as the law requires of a judge of the municipal court. The appointment shall be pursuant to Section 72190 and the commissioner shall receive a salary which equals 85 percent of the annual salary of a superior court judge. The commissioner is a court employee within the meaning of Section 74609. The duties of the commissioner shall be as prescribed by law.

SEC. 27. Section 74604 of the Government Code is amended to read:

74604. There shall be one clerk of the court known as the court executive officer, who shall be appointed by the presiding judge with the concurrence of a majority of the judges of the court, and shall hold office at the pleasure of the majority of the judges of the court. The monthly compensation to be paid to the court executive officer shall be range 3283 of the San Luis Obispo County Salary Table. In addition to any other duties imposed on such officer by law, the court executive officer shall have the following duties:

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

(b) To coordinate the personnel practices in compliance with rules of the court.

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

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

(e) To initiate studies and prepare appropriate recommendations and reports to the presiding judge relating to the business of the court, including, but not limited to, standardization of forms, procedures, and classification and compensation of officers and employees.

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

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

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

SEC. 28. Section 74607 of the Government Code is amended to read:

74607. The presiding judge may make appointments to the following authorized positions:

Number	Classification	Salary Range
1	Director of Criminal Court Operations	2813
1	Calendar Coordinator	1390
12	Municipal Court Clerk Trainee, or	1056
	Municipal Court Clerk I, or	1155
	Municipal Court Clerk II	1241
2	Municipal Court Account Technician	1186
1	Municipal Court Senior Account Clerk	1085
2	Municipal Court Account Clerk	0929
1	Accountant I, or	1480
	Accountant II, or	1693
	Accountant III	2042
28	Municipal Court Legal Process Clerk, or	0881
	Municipal Court Legal Process Clerk I, or	1056
	Municipal Court Legal Process Clerk II, or	1155
	Municipal Court Legal Process Clerk III	1223
2	Municipal Court Legal Process Clerk III—1/2 time	1223
4	Supervising Municipal Court Clerk	1390
1	Supervising Municipal Court Legal Process Clerk	1358
1	Administrative Services Officer I, or	1480
	Administrative Services Officer II	1693
1	Court Data Manager	2380
1	Court Automation Analyst	2380
1	Mail Clerk	0881

SEC. 29. Section 74610 of the Government Code is amended to read:

74610. (a) The positions enumerated in Sections 74604, 74607, and 74608 are deemed to be comparable in job and salary level to certain positions in the service of San Luis Obispo County. The following table sets forth the court classifications with the comparable county classifications shown opposite thereto:

Court Classification	County Classification
Court Executive Officer/Traffic Referee	Deputy County Counsel IV (Confidential)
Director of Criminal Court Operations	Chief Pharmacist

Calendar Coordinator	Supervising Superior Court Clerk
Municipal Court Clerk I, II	Superior Court Clerk I, II
Municipal Court Clerk Trainee	Legal Process Clerk I
Municipal Court Accounting Technician	Accounting Technician
Municipal Court Senior Account Clerk	Senior Account Clerk
Municipal Court Account Clerk	Account Clerk
Accountant I, II, III	Accountant I, II, III
Municipal Court Legal Process Clerk	Legal Process Clerk Trainee
Municipal Court Legal Process Clerk I, II, III	Legal Process Clerk I, II, III
Municipal Court Legal Process Clerk III—$^1/_2$ time	Legal Process Clerk III
Supervising Municipal Court Clerk	Supervising Superior Court Clerk
Supervising Municipal Court Legal Process Clerk	Supervising Legal Process Clerk
Administrative Services Officer I, II	Administrative Services Officer I, II
Court Data Manager	Programmer Analyst II plus 10 percent
Court Automation Analyst	Senior Programmer Analyst
Mail Clerk	Mail Clerk

In the event that the salary for any classification which is shown above is increased by the board of supervisors, a commensurate increase shall be made in the salary for the comparable court classification. Salary adjustments made pursuant to this section shall be effective the same date as the effective date of actions of the board of supervisors applicable to the respective and comparable county classifications, but shall remain effective only until January 1 of the second year following the year in which such an adjustment is made.

(b) Upon recommendation of the judges of the court, and with the approval of the board of supervisors, the court may appoint additional employees as it deems necessary for the performance of the duties and exercise of the powers conferred by law upon the court and its members. Any appointment made pursuant to this section shall be on an interim basis and shall expire January 1 of the second calendar year following the year in which the appointment is made

unless ratified by the Legislature. This section shall not affect the application of Section 72150.

SEC. 30. Section 74642 of the Government Code is amended to read:

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

	Santa Barbara Municipal Court	Salary Range
2	Account Clerk III-Ct.	413
1	Account Technician-Ct.	441
1	Business Manager II-Ct.	563
1	Assistant Clerk-Admin.Officer (SB)	564
1	Clerk-Administrative Officer (SB)	614
2	Collections Rep.-Ct.	439
2	Commissioner, Municipal Court	3,266.89/BI-WKLY
1	Judicial Services Manager	560
2	Court Interpreter	452
1	Department Analyst—Ct.	518
1	Department DP Spec.-Ct.	497
1	EDP Sys. & Prog. Anlst.I/II- Ct.	537/554
1	EDP System & Prog. Analyst I-Ct. D OR EDP System & Prog. Analyst II-Ct. D	537 554
1	Exec. Secretary-Ct.	459
31	Judicial Asst. I-Ct. OR Judicial Asst. II-Ct.	407 428
2	Judicial Asst. I-Ct. D OR Judicial Asst. II-Ct. D	407 428
14	Judicial Asst. III-Ct.	462
1	Judicial Asst. III-Ct. D	462
1	Judicial Cal. Coord.-Ct.	495
5	Judicial Services Supv.-Ct.	481
2	Official Court Reporter-Municipal Court D	546
1	Official Court Reporter-Municipal Court	546
4	Own Recognizance Officer	494
1	Own Recognizance Supervisor	514

SEC. 31. Section 74643 of the Government Code is amended to read:

74643. Within the North Santa Barbara County Municipal Court there shall be the following officers, attachés, and employees:

	North Santa Barbara County Municipal Court	Salary Range
1	Account Tech.—Ct.	441
2	Own Recognizance Officer	494
1	Own Recognizance Supervisor	514
1	Court Clerk Chief—Ct.	515
3	Court Interpreter	452
2	Department DP Specialist—Ct.	497
1	Executive Secretary—Ct.	459
27	Judicial Asst. I/II—Ct.	407/428
13	Judicial Asst. III—Ct.	462
3	Judicial Services Supv.—Ct.	481
2	Judicial Services Manager	560
1	Judicial Services Manager Senior	580
1	Legal Research Asst. or Legal Research Asst.—Sr.	621/650
1	Traffic Referee	$2,828/BI-WKLY

SEC. 32. Section 74663 of the Government Code is amended to read:

74663. (a) In the Santa Clara County Judicial District there shall be one chief administrative officer/clerk who shall receive a base salary of three thousand five hundred ninety-eight dollars and twenty-four cents ($3,598.24) biweekly, plus or minus $12^1/_2$ percent, and shall, notwithstanding Section 74666, be appointed by and serve at the pleasure of a majority of the judges of the municipal court. In addition, there will be one legal aide (unclassified) and one staff attorney (unclassified) who shall be appointed by and serve at the pleasure of a majority of the judges. The legal aide shall serve one-year terms. The legal aide shall be appointed by and serve at the pleasure of a majority of the judges and shall receive a salary as specified in range 45.0B, and the staff attorney shall receive a salary as specified in range 40.0A. The Santa Clara County Salary Ordinance No. NS-5.97 and NS.20.97, as amended, for the fiscal year July 1, 1997, through June 30, 1998, are the sources for all salaries.

(b) The chief-administrative officer/clerk may appoint all of the following:

(1) One assistant chief administrative officer/clerk who shall receive a base salary of two thousand nine hundred two dollars and eighty-eight cents ($2,902.88), biweekly, plus or minus $12^1/_2$ percent.

(2) One deputy administrator/court operations who shall receive a salary as specified in range 40.7A.

(3) One deputy administrator/court services who shall receive a salary as specified in range 40.7A.

(4) One administrative services manager II who shall receive a salary as specified in range 42.4A.

(5) One departmental systems specialist II who shall receive a salary as specified in range 42.6A, or one departmental systems specialist I who shall receive a salary as specified in range 40.6A.

(6) One municipal court department information systems specialist who shall receive a salary as specified in range 26.0Y.

(7) Two management analysts who shall receive a salary as specified in range 37.9A, or associate management analyst B who shall receive a salary as specified in range 34.1A, or associate management analyst A who shall receive a salary as specified in range 31.0A.

(8) Two accountants III who shall receive a salary as specified in range 37.4A, or accountants II who shall receive a salary as specified in range 46.8B, or accountant/auditor appraiser who shall receive a salary as specified in range 44.0B.

(9) One accountant II who shall receive a salary as specified in range 46.8B, or accountant/auditor appraiser who shall receive a salary as specified in range 44.0B.

(10) One administrative support officer I who shall receive a salary as specified in range 35.0A.

(11) Two secretaries III who shall receive a salary as specified in range 43.4B, or secretaries II who shall receive a salary as specified in range 41.4B, or secretaries I who shall receive a salary as specified in range 39.2B.

(12) One secretaries II who shall receive a salary as specified in range 41.4B, or secretaries I who shall receive a salary as specified in range 39.2B, or office clerk who shall receive a salary as specified in range 35.2B.

(13) One account clerk II who shall receive a salary as specified in range 38.6B.

(14) One municipal court division manager III who shall receive a base salary of two thousand five hundred thirty-one dollars and fifty-two cents ($2,531.52) biweekly, plus or minus $12^1/_2$ percent.

(15) Two municipal court division managers II who shall receive a base salary of two thousand three hundred thirty dollars and fifty-six cents ($2,330.56) biweekly, plus or minus $12^1/_2$ percent.

(16) Three municipal court division managers I who shall receive a base salary of two thousand one hundred eighty-seven dollars and four cents ($2,187.04) biweekly, plus or minus $12^1/_2$ percent.

(17) Three and one-half chief deputy court clerks I who shall receive a salary as specified in range 36.5A.

(18) Thirteen supervising deputy court clerks II who shall receive a salary as specified in range 34.5A.

(19) Four supervising deputy court clerks I who shall receive a salary as specified in range 32.7A.

(20) Ten assistant supervising deputy court clerks who shall receive a salary as specified in range 31.7A.

(21) Sixty-two municipal courtroom clerks who shall receive a salary as specified in range 44.8B.

(22) Two hundred nine and one-half deputy court clerks II who shall receive a salary as specified in range 42.1B or deputy court clerks I who shall receive a salary as specified in range 35.9B.

(23) Two court services coordinators who shall receive a salary as specified in range 33.6A.

(24) Seven accountant assistants who shall receive a salary as specified in range 40.5B.

(25) One security guard who shall receive a salary as specified in range 39.1B.

(26) One storekeeper who shall receive a salary as specified in range 37.9B.

(27) One messenger-driver who shall receive a salary as specified in range 36.8B.

(28) Thirty-four municipal court court reporters (unclassified) who shall receive a salary as specified in range 51.5K.

SEC. 32.2. Section 74665 of the Government Code is amended to read:

74665. In the Santa Clara County Judicial District the judges of these courts, pursuant to Section 72194, may appoint as many additional reporters as the business of the courts may require, who shall be known as official reporters pro tempore, and who shall serve without salary but shall receive the fees provided by Sections 69947 to 69953, inclusive, except that in lieu of the per diem fees provided in those sections for reporting testimony and proceedings, the official reporters pro tempore shall in all cases receive one hundred fourteen dollars and eighty-five cents ($114.85) per half day and two hundred twenty-nine dollars and seventy cents ($229.70) per day, which shall, upon order of the court, be a charge against the general fund of the county. If the board of supervisors increases the per diem fees for official court reporters pro tempore in the superior court pursuant to Section 70046.1, this increase shall apply equally for all official reporters pro tempore in the municipal courts, but all of these increases shall be effective only until the second year following the calendar year in which the adjustment is made.

SEC. 32.4. Section 74727.5 is added to the Government Code, to read:

74727.5. (a) Whenever a reference is made to a numbered salary range in any section of this article, the schedule of biweekly salaries found in the salary ordinance of Siskiyou County shall apply.

(b) The work of the superior and municipal courts in Siskiyou County is to be performed, minimally, by each of the positions herein identified by the trial courts of Siskiyou County.

(c) The court may appoint the following numbers of staff at the classification and salary ranges indicated:

Number	Classification	Salary Range
1	Director of Family Court Services	51
1	Court Reporter	48
1.75	Research Attorney (Attorney III)	60
1	Court Manager II	45
2	Court Manager I	41
2	Judicial Secretary	38
1	Senior Legal Secretary	32
1	Legal Secretary	28
.5	Court Mediator/Evaluator	40
2	Information System Specialist III	46
4	Court Clerk III	30
20	Court Clerk II	26
1	Court Executive Officer	59
.75	Family Law Facilitator (Attorney III)	60
1	Bailiff	30

SEC. 33. Section 74743 of the Government Code is amended to read:

74743. (a) By order entered in the minutes of the court, a majority of judges may appoint two commissioners. However, if the board of supervisors finds that there are sufficient funds for one additional commissioner and adopts a resolution to that effect, a majority of judges may appoint an additional commissioner. The commissioners shall serve at the pleasure of the judges and shall receive a salary equal to 80 percent of the salary of a judge of the municipal court.

(b) A commissioner shall receive and be entitled to the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be provided for a chief deputy county counsel in the classified service of the County of San Diego. However, a commissioner shall be entitled to (1) earn sick leave credit at the rate of 5 percent of each hour of paid service during the pay period; and (2) earn vacation credit at the rate of 8.075 percent of each hour of paid service during the pay period until such time as the commissioner has 15 years of county/court service. At that time, the commissioner will earn vacation at the same rate as chief deputy county counsel with 15 years of county service.

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

SEC. 33.2. Section 74745 of the Government Code is amended to read:

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

(a) Three deputy court administrators. Persons appointed to this position on or after January 1, 1993, shall serve at the pleasure of the court administrator. The deputy court administrators shall receive a salary within the biweekly rate range ES-6 indicated in the Compensation Ordinance of the County of San Diego. The biweekly salary, and any advancement or reduction within the range, shall be determined in accordance with the provisions set forth under Article 3.5 of the Compensation Ordinance of the County of San Diego and of subdivision (a) of Section 74345, except that any reference to "executive compensation committee" or "the chief administrative officer" in Article 3.5 of the Compensation Ordinance of the County of San Diego shall be interpreted as "the court administrator."

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

(c) One deputy clerk-division manager I, II, or III, as the case may be. A division manager I shall receive a biweekly salary at a rate 10 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager II shall receive a biweekly salary at a rate 15.5 percent higher than that specified for deputy clerk V in the San Diego Judicial District. A division manager III shall receive a biweekly salary at a rate 24.5 percent higher than that specified for deputy clerk-division manager II.

(d) Seven deputy clerks V each of whom shall receive a biweekly salary equal to that specified for deputy clerk V in the San Diego Municipal Court. The duties of the class of deputy clerk V shall include supervisory responsibilities.

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

clerk-accounting manager shall receive a biweekly salary at a rate equal to that specified for deputy clerk-division manager III.

(f) One deputy clerk-staff development specialist or a deputy clerk-staff development coordinator, as the case may be. A deputy clerk-staff development specialist shall receive a biweekly salary at a rate equal to that specified for staff development specialist in the classified service of the County of San Diego. A deputy clerk-staff development coordinator shall receive a biweekly salary at a rate 5 percent higher than that specified for staff development specialist in the classified service of the County of San Diego.

(g) One deputy clerk-volunteer program coordinator. A deputy clerk-volunteer program coordinator shall receive a biweekly salary at a rate equal to the greater of that specified for volunteer program coordinator in the superior court service of the County of San Diego or 15.75 percent higher than that specified for deputy clerk III.

(h) Ten deputy clerks IV. Each of the deputy clerks IV shall receive a biweekly salary at a rate equal to the greater of that specified for superior court clerk in the superior court service of the County of San Diego or 19.95 percent higher than that specified for deputy clerk III.

(i) Sixty-four deputy clerks III, II, or I, or deputy clerk-intermediate clerk typists, as the case may be. Each of the deputy clerks III shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk III in the classified service of the County of San Diego. Each of the deputy clerks II shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk II in the classified service of the County of San Diego. Each of the deputy clerks I shall receive a biweekly salary at a rate equal to that specified for legal procedures clerk I in the classified service of the County of San Diego. At the discretion of the court administrator, appointments to the deputy clerk I and II classification may be at any step within the salary range. Up to three of these positions may be filled at the level of deputy clerk-intermediate clerk typist. A deputy clerk-intermediate clerk typist shall receive a biweekly salary at a rate equal to that specified for intermediate clerk typist in the classified service of the County of San Diego. In the absence of a deputy clerk IV, the court administrator may assign a maximum of five deputy clerks III to perform courtroom clerk duties, supervisory duties, or training duties for 40 or more hours during a pay period. A deputy clerk III assigned to perform these duties is eligible to receive a biweekly salary at a rate 10 percent higher than that specified for a deputy clerk III. This increased biweekly salary shall apply only during pay periods in which 40 or more hours are spent performing the supervisory, training, or courtroom clerk duties specified above and shall not apply to paid leave or to terminal payoff.

(j) One deputy clerk-administrative secretary IV, III, II, or I, as the case may be. A deputy clerk-administrative secretary IV shall receive a biweekly salary at a rate equal to that specified for

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

(k) Four deputy clerk-court interpreters who shall receive a biweekly salary at a rate equal to that specified for superior court clerk-interpreter in the superior court service of the County of San Diego.

(*l*) Notwithstanding subdivision (b) of Section 74749, up to 10 deputy clerk-court workers may be appointed by and serve at the pleasure of the court administrator. The class of deputy clerk-court worker provides for temporary appointments to positions in classes not listed in Sections 74740 to 74750, inclusive, pending a review and evaluation of the duties of these positions by the court administrator, and the establishment of specific classes as provided in this section. Prior to the establishment of those classes, the county personnel director shall conduct a classification review and make recommendations to the municipal court as to the establishment of those classes. The rate of pay for each individual employed in this class of deputy clerk-court worker shall be within the range proposed for the class pending establishment, at a rate determined by the court administrator following consultation with the county personnel director. The rules regarding appointment and compensation as they relate to appointments to deputy clerk-court worker shall be the same as those applicable to the class that is pending establishment. Appointments shall be temporary and shall not exceed 18 months. Employee benefits, if applicable, shall be equal to those granted to the class in the classified service of the County of San Diego to which the pending class shall be tied for benefit purposes. When that appointment is made, the class, compensation (including salary and fringe benefits), and number of those positions may be established by joint action of the majority of the judges and the board of supervisors in accordance with established county personnel and budgetary procedures. In the event that the class pending establishment is tied to a class in the unclassified service of the County of San Diego, the joint action may designate that persons serving in the class pending establishment shall serve at the pleasure of the court administrator. The court administrator may then appoint additional attachés to the classes of positions in the same manner as those for which express provision is made, and they shall receive the compensation so provided. Persons occupying deputy clerk-court worker positions shall have their appointments expire not later than

30 calendar days following promulgation of a list of certified eligibles for the new class. Appointments to the new class shall continue at the stated compensation or as thereafter modified by joint action of the majority of the judges and the board of supervisors.

(m) Notwithstanding subdivision (b) of Section 74749, up to 10 extra help positions (hourly rate) to be appointed by and serve at the pleasure of the court administrator in the class and salary level deemed appropriate. These appointments shall be temporary for a period not to exceed six months, plus one additional period of up to six months, at the court administrator's option. Notwithstanding any other provisions of this section, the court administrator may fill these positions with personnel employed for a period not to exceed 120 working days or 960 hours, whichever is greater, during a fiscal year on a part-time basis.

(n) Notwithstanding subdivision (c) of Section 74749, the court administrator may appoint up to 15 temporary extra help deputy clerk-municipal court trainees I, II, III, or V, who shall be paid at an hourly rate and shall serve at the pleasure of the court administrator. A deputy clerk-municipal court trainee I shall receive an hourly salary at a rate equal to that specified for student worker I in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee II shall receive an hourly salary at a rate equal to that specified for student worker II in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee III shall receive an hourly salary at a rate equal to that specified for student worker III in the unclassified service of the County of San Diego. A deputy clerk-municipal court trainee V shall receive a biweekly salary at a rate equal to that specified for student worker V in the classified service of the County of San Diego. Persons who graduate and receive a degree in the field which qualified them for appointment to a deputy clerk-municipal court trainee class, may remain in the class and be employed on a full-time basis for up to six months from the first day of the month following their date of graduation.

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

(p) Three confidential deputy administrative clerks or deputy administrative clerks III, II, or I, as the case may be. A confidential deputy administrative clerk III and a deputy administrative clerk III shall receive a biweekly salary at a rate equal to that specified for deputy clerk IV. A confidential deputy administrative clerk II and a deputy administrative clerk II shall receive a biweekly salary at a rate equal to that specified for deputy clerk III. A confidential deputy administrative clerk I and a deputy administrative clerk I shall receive a biweekly salary at a rate equal to that specified for deputy clerk II.

(q) One deputy clerk-municipal court secretary, who shall receive a salary at a rate equal to that specified for confidential legal secretary III in the classified service of the County of San Diego. At the discretion of the court administrator appointment to the deputy clerk-municipal court secretary may be at any step within the salary range.

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

(s) One deputy clerk-municipal court computer specialist I, II, or III, as the case may be. A deputy clerk-municipal court computer specialist I, II, or III shall receive a biweekly salary at a rate equal to that specified for departmental computer specialist I, II, or III, respectively, in the classified service of the County of San Diego.

(t) Three deputy clerk-collection officers I, II, or III, as the case may be. A deputy clerk-collection officer I shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer I in the classified service of the County of San Diego. A deputy clerk-collection officer II shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer II in the

classified service of the County of San Diego. A deputy clerk-collection officer III shall receive a biweekly salary at a rate equal to that specified for revenue and recovery officer III in the classified service of the County of San Diego. Persons appointed to these positions on or after January 1, 1999, shall serve at the pleasure of the court administrator.

(u) One deputy clerk-small claims adviser or deputy clerk-small claims counsel, as the case may be. The deputy clerk-small claims adviser shall receive a biweekly salary at a rate of 18.63 percent less than that specified for small claims counsel in the classified service of the County of San Diego. The deputy clerk-small claims counsel shall receive a biweekly salary at a rate equal to that specified for small claims counsel in the classified service of the County of San Diego.

(v) Two deputy clerk-substance abuse assessors I or II, as the case may be. Notwithstanding subdivision (b) of Section 73649, persons appointed to these positions on or after January 1, 1998, shall serve at the pleasure of the court administrator. A substance abuse assessor II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of the County of San Diego. A deputy clerk-substance abuse assessor I shall receive a biweekly salary at a rate 9 percent below that specified for a deputy clerk-substance abuse assessor II. Appointments to deputy clerk-substance abuse assessor I and II may be at any step within the salary range.

(w) One deputy clerk-court referral officers II or deputy clerk-court referral officers I, as the case may be. A deputy clerk-court referral officer II shall receive a biweekly salary at a rate equal to that specified for the class of deputy probation officer in the classified service of San Diego County. A deputy clerk-court referral officer I shall receive biweekly salary at a rate of 9 percent below that specified for the class of deputy probation officer in the classified service of San Diego County. The above positions shall be filled only upon the equivalent number of corresponding vacancies in the positions denoted in subdivisions (d) and (e) of Section 74359.1.

(x) Notwithstanding any other provision of law, the number of positions and compensation of positions in classifications authorized under subdivisions (a) to (k), inclusive, under subdivisions (m), (n), and (p) to (x), inclusive, and under Sections 74743, 74744, and 74750 may be adjusted as necessary by action of the majority of the judges. The rules regarding appointments of persons to those positions shall be the same as those applicable to the class of those positions. The action of the majority of the judges adjusting those positions shall designate the class title or titles, number of positions, and compensation for each respective class. Any adjustment made pursuant to this subdivision shall be effective upon action of the majority of judges and shall remain in effect until ratified by the Legislature.

SEC. 33.4. Section 74745.1 is added to the Government Code, to read:

74745.1. Any positions authorized by Section 74745 may be filled by independent contractors on a contractual basis at the discretion of the court administrator. Should any of the positions be filled by independent contractors on a contractual basis, the provisions of Section 74745 shall not apply for these positions only.

SEC. 33.6. Section 74749 of the Government Code is amended to read:

74749. (a) In addition to the salary provided in this article, the attachés of the municipal court shall receive, and they shall be entitled to the same number of holidays, leaves of absence, percentage of retirement offsets and all other fringe benefits as now or may hereafter be provided for the employees of the County of San Diego in the comparable classes specified in Section 74345.

The court administrator shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may be hereafter received by the classification of chief probation officer of the County of San Diego. The deputy court administrators shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may be hereafter received by the classification of assistant chief probation officer of the County of San Diego. All persons employed as deputy clerk-division manager III, deputy clerk-division manager II, or deputy clerk-division manager I, shall receive the same number of holidays, leaves of absence, and all other fringe benefits as are now or may hereafter be received by the class of administrative assistant III in the classified service of the County of San Diego. However, all officers, employees, and attachés of the municipal court shall be eligible to enroll in the dental and vision group insurance plans sponsored by the County of San Diego.

The purpose and intent of this subdivision is to provide all court attachés except the commissioner and court reporters with any and all fringe benefits but no more than those which are available to their comparable classes in the service of the County of San Diego as specified herein or in Section 74345. Whenever action or approval by the chief administrative officer or county personnel director is required for the county benefit, it shall be taken or given, as to comparable municipal court officers and attachés other than those serving at the pleasure of the court, by the court administrator with the approval of the majority of the judges of the municipal court or their designees, or as to those serving at the pleasure of the court, by the majority of the judges or their designees. Changes in benefits shall be effective on the same date as those for employees of the County of San Diego in the specified comparable classes. The majority of all the municipal court judges may adopt rules for the conduct of the personnel privileges to be afforded the attachés of the court excluding fringe benefits.

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

SEC. 33.8. Section 74765 of the Government Code is amended to read:

74765. (a) All matters affecting the employment of the officers, employees, and attachés of the consolidated courts that are not specifically determined by this article or another provision of state law shall be governed by the personnel ordinance and resolutions of the County of Glenn. Employees currently governed by the terms and conditions of the current Memorandum of Understanding between the County of Glenn and the Glenn County Employees Association shall continue to be covered by the agreement until amended or superseded by mutual agreement.

(b) The officers, employees, and attachés of the consolidated courts shall be entitled to the same vacation, sick leave, and similar benefits and privileges as those granted to other employees of the county who are not represented by an employee association authorized to meet and confer with the County of Glenn over the terms and conditions of the employment of the employees represented by the association. Incumbent officers, employees, and attachés of the superseded court shall retain all accrued benefits and privileges resulting from service in the superseded court if Constitutional Amendment 4 is passed by the voters and adopted by unanimous vote of the judges of the Glenn County Superior and Municipal Courts of the County of Glenn.

(c) The Board of Supervisors of the County of Glenn may adjust the salaries paid and benefits provided to employees of the consolidated courts as part of its county employee compensation plan:

(1) There shall be one clerk and jury commissioner for the Glenn County Consolidated Courts, who shall be the court Executive Officer and receive an annual salary recommended by the courts and approved by the board of supervisors.

(2) The Glenn County Courts are judicially and administratively consolidated with joint job classifications, the work of the Superior and Municipal Courts in Glenn County is to be performed minimally by each of the positions herein identified by the trial courts of Glenn County. The Court Executive Officer with the approval of the judges

may appoint the following authorized titles, number of positions and compensation rates for employees of the Glenn County Courts:

Position Title	No. of Positions	Biweekly Salary
Deputy Court Executive Officer	1	1,760.00-1,760.00
Court Analyst	1	1,091.20-1,329.60
Court Administrative Services Officer	1	964.00-1,175.20
Court Accounting Technician	1	1,012.80-1,234.40
Legal Process Clerk Supervisor	1	964.00-1,175.20
Legal Process Clerk IV	1	895.20-1,091.20
Legal Process Clerk III	3	811.20-988.80
Legal Process Clerk II	8	734.40-895.20
Legal Process Clerk I	2	682.40-832.00
Administrative Secretary/Law Librarian	1	717.60-873.60
Technology Technician	1	1,091.20-1,329.60
Court Conciliator Supervising	1	2,880.00-2,880.00
Court Investigator	1	323.05-323.05
Court Reporter	1	1,297.00-1,297.00
Court Interpreter	1	607.50-607.50

Such other employees as the board of supervisors may approve upon the recommendation of the consolidated courts, each of which shall receive a salary recommended by the courts and approved by the board of supervisors. Any appointee shall be compensated in the first step of the range and advanced to each higher step upon satisfactory completion of 12 months service in the preceding range. Upon the recommendation of the courts and approval of the board of supervisors, such employees may be employed at, or may be granted, a special step increase to any step within the salary range on the basis of experience and qualifications.

SEC. 33.9. Section 74905 of the Government Code is amended to read:

74905. (a) There shall be one clerk of the Ventura County Coordinated Courts, who shall be known as the court executive officer and who shall be appointed by and serve at the pleasure of a majority of the judges of the coordinated courts. The court executive officer shall receive the biweekly compensation of four thousand three hundred eighteen dollars ($4,318) to four thousand eight hundred seventy-four dollars ($4,874).

(b) There shall be two assistant executive officers and four deputy executive officers of the Ventura County Coordinated Courts who shall be appointed by and serve at the pleasure of the court executive

officer. The assistant executive officers shall receive the biweekly compensation of two thousand six hundred sixty-six dollars ($2,666) to three thousand eight hundred thirteen dollars ($3,813). The deputy executive officers shall receive the biweekly compensation of two thousand one hundred and one dollars ($2,101) to three thousand and one dollars ($3,001).

(c) The rate of biweekly compensation to be paid to the court executive officer, within the compensation ranges set forth within subdivision (a), shall be established by a majority of the judges of the Ventura County Coordinated Courts at an amount equal to that paid county employees with comparable experience and responsibility. The rate of biweekly compensation to be paid to the assistant executive officers, and the deputy executive officers, within the compensation ranges set forth in subdivision (b), shall be established by joint action of the courts and approval of the board of supervisors or their designee, at an amount equal to that paid county employees with comparable experience and responsibility.

SEC. 34. Section 74907 of the Government Code is amended to read:

74907. Whereas the Ventura County Courts are judicially coordinated and administratively consolidated with joint job classifications, the work of the superior and municipal courts in Ventura County is to be performed, minimally, by each of the positions herein identified by the trial courts of Ventura County. The court executive officer may appoint the following positions which shall receive biweekly compensation as specified in Section 74909:

(a) Eight court program managers.
(b) Four court office systems coordinator II.
(c) Two financial evaluation officers II.
(d) Seventeen court program supervisors.
(e) Two court program supervisors: fiscal.
(f) Two court program managers: collections.
(g) One court program manager: facilities.
(h) One administrative assistant II.
(i) Two court personnel assistants.
(j) Seven collections officers II.
(k) One court program manager: fiscal.
(*l*) One courier II.
(m) Eighty-five court services assistants II.
(n) Thirteen court services assistants III.
(o) Seven fiscal assistants II.
(p) Six fiscal assistants III.
(q) One fiscal assistant IV.
(r) Three fiscal technicians I.
(s) One court program manager: human resources.
(t) One court office systems coordinator III.
(u) Sixty-seven judicial assistants.
(v) Six attorneys: 84 months.

(w) Two management assistants II.
(x) One management assistant IV: confidential.
(y) Three collections officers III.
(z) Two fiscal technicians II.
(aa) Two data entry operators III.
(ab) Four court interpreter/translators.
(ac) Two office assistants II.
(ad) One office assistant III.
(ae) Two senior attorneys.
(af) One senior court interpreter/translator.
(ag) One court program manager: systems.
(ah) One court personnel analyst I.
(ai) One court personnel aide.
(aj) One court program assistant.
(ak) One court program manager: family mediation.
(a*l*) Eight family relations mediators.
(am) One court child care coordinator II.

SEC. 35. Section 74909 of the Government Code is amended to read:

74909. (a) The following biweekly salary schedule, which is consistent with the Salary Ordinance of the County of Ventura, shall apply to the personnel of the Ventura County Coordinated Courts:

Coordinated Courts Classification	Biweekly Rate
Court Program Manager	$1,546.82–2,203.33
Court Program Manager–Collections	1,615.76–2,303.12
Court Program Manager–Facilities	1,725.09–2,462.23
Administrative Assistant II	1,132.99–1,588.88
Court Personnel Assistant	1,060.90–1,505.70
Court Program Manager–Fiscal	1,951.32–2,785.61
Court Program Manager–Human Resources	1,725.09–2,462.23
Court Office Systems Coordinator II	1,238.67–1,741.86
Financial Evaluation Officer II	860.25–1,203.52
Court Program Supervisor	1,126.38–1,577.55
Collections Officer II	819.47–1,146.62
Collections Officer III	860.25–1,203.52
Courier II	644.68– 900.70
Court Services Assistant II	839.44–1,175.08
Court Services Assistant III	902.70–1,263.16
Fiscal Assistant II	692.95– 968.61
Fiscal Assistant III	781.18–1,092.49
Fiscal Assistant IV	839.44–1,175.08
Fiscal Technician I	924.33–1,294.37

Fiscal Technician II	994.25–1,391.63
Attorney–84 months	2,889.77–3,106.50
Judicial Assistant	946.80–1,325.56
Court Program Manager–Systems	1,766.06–2,521.13
Management Assistant II	839.44–1,175.08
Management Assistant IV–Confidential	1,060.90–1,505.70
Court Program Supervisor–Fiscal	1,372.30–1,925.57
Data Entry Operator III	703.78– 983.78
Office Assistant II	644.68– 900.70
Office Assistant III	744.56–1,041.10
Senior Attorney	2,475.09–3,542.48
Senior Court Interpreter/Translator	1,801.72–1,801.72
Court Interpreter/Translator	1,723.09–1,723.09
Court Personnel Analyst I	1,276.17–1,816.50
Court Personnel Aide	826.54–1,156.91
Court Program Assistant	1,218.49–1,732.50
Court Office Systems Coordinator III	1,450.04–2,033.60
Court Program Manager–Family Mediation	1,866.90–2,662.51
Family Relations Mediator	1,359.24–1,905.83
Court Child Care Coordinator II	839.44–1,175.08

*NE-Nonexempt

Merit increases within the salary range shall be in accordance with the salary merit increment plan.

(b) In the event that the above biweekly salary schedule is not applicable, then Section 74912 shall apply.

SEC. 36. Section 74910 of the Government Code is amended to read:

74910. If an increase in the business of the court or any other emergency requires a greater number of attachés or employees for the prompt and faithful discharge of the business of the court than the number expressly provided in this article or requires the performance of duties of positions in a class not expressly provided in this article, with the approval of a majority of the judges of the coordinated courts and the board of supervisors, or their designee, the court executive officer may appoint as many additional attachés or employees as are needed. The additional attachés or employees shall be selected and appointed in the same manner as those for whom express provision is made, and they shall receive salary and compensation as prescribed in this article or as prescribed in the Ventura County Personnel and Salary Ordinance for classes not

expressly provided for in this article. Additional attachés and employees may continue in such positions not longer than 90 days after the final adjournment of the next regular session of the Legislature. The provisions of this section are directory only and are not mandatory and are not intended to affect the application of Section 72150.

SEC. 37. Section 74911 of the Government Code is amended to read:

74911. (a) All attachés and employees of the Ventura County Coordinated Courts shall be entitled to anniversary dates and salary step increases in the manner provided in the Ventura County Personnel and Salary Ordinance and shall receive the same vacation, sick leave, leave of absence, overtime and similar privileges and benefits provided for the officers and employees of Ventura County.

Except as otherwise provided in this article, the provisions of the Ventura County Ordinance Code relating to the civil service system of the county, and the rules of the civil service commission adopted pursuant thereto, shall be applicable to all attachés and employees of the Ventura County Coordinated Courts in the same manner and to the same extent as applicable generally to the officers and employees of Ventura County. The Ventura County Civil Service Commission shall exercise the same jurisdiction over the attachés and employees of the Ventura County Coordinated Courts as it exercises over the officers and employees of the county.

(b) The provisions of subdivision (a) shall not apply to the court executive officer, the assistant executive, the assistant court executive officer, or deputy executive officers. Notwithstanding any other provisions of this article, such persons shall receive the salary and benefits adjustments provided to other Ventura County Management personnel.

SEC. 38. Section 74912 of the Government Code is amended to read:

74912. Certain classifications in the Ventura County Coordinated Courts are deemed to be equivalent in position responsibility and salary level to certain classifications in the service of Ventura County, and whenever the salary of an equivalent classification in the Ventura County service is adjusted by the board of supervisors, the salary of the equivalent classification in the Ventura County Coordinated Courts and the salary of the personnel in such classifications, shall be adjusted an equivalent amount. The adjustment shall be effective on the same date as the effective date of the action by the board of supervisors as it applies to classifications in the Ventura County service. Any salary increases granted or reclassifications made pursuant to this article shall be effective only until the effective date of general legislation enacted by the Legislature at its next regular session following the date the salary increases are granted or reclassifications made. Classifications deemed to be equivalent are as follows:

Coordinated Courts Classification	County Classification
Court Program Manager	Court Program Manager
Court Program Manager–Collections	Court Program Manager–Collections
Court Program Manager–Facilities	Court Program Manager–Facilities
Administrative Assistant II	Administrative Assistant II
Court Personnel Assistant	Court Personnel Assistant
Court Program Manager–Fiscal	Court Program Manager–Fiscal
Court Program Manager–Human Resources	Court Program Manager–Human Resources
Court Office Systems Coordinator II	Court Office Systems Coordinator II
Financial Evaluation Officer II	Financial Evaluation Officer II
Court Program Supervisor	Court Program Supervisor
Collections Officer II	Collections Officer II
Collections Officer III	Collections Officer III
Courier II	Courier II
Court Services Assistant II	Court Services Assistant II
Court Services Assistant III	Court Services Assistant III
Fiscal Assistant II	Fiscal Assistant II
Fiscal Assistant III	Fiscal Assistant III
Fiscal Assistant IV	Fiscal Assistant IV
Fiscal Technician I	Fiscal Technician I
Fiscal Technician II	Fiscal Technician II
Judicial Assistant	Judicial Assistant
Court Program Manager–Systems	Court Program Manager–Systems
Management Assistant II	Management Assistant II
Management Assistant IV–Confidential	Management Assistant IV–Confidential
Court Program Supervisor–Fiscal	Court Program Supervisor–Fiscal
Data Entry Operator III	Data Entry Operator III
Office Assistant II	Office Assistant II
Office Assistant III	Office Assistant III
Attorney–84 Months	Attorney–84 Months
Court Interpreter/Translator	Court Interpreter/Translator
Senior Attorney	Senior Attorney
Senior Court Interpreter/Translator	Senior Court Interpreter/Translator
Court Personnel Analyst I	Court Personnel Analyst I

Court Personnel Aide	Court Personnel Aide
Court Program Assistant	Court Program Assistant
Court Office Systems Coordinator III	Court Office Systems Coordinator III
Court Program Manager–Family Mediation	Court Program Manager–Family Mediation
Family Relations Mediator	Family Relations Mediator
Court Child Care Coordinator II	Court Child Care Coordinator II

*NE—Nonexempt

SEC. 39. Section 74913 of the Government Code is amended to read:

74913. A majority of the judges of the Ventura County Coordinated Courts may adopt rules for the conduct of the officers, attachés and employees of the Ventura County Coordinated Courts not inconsistent with the Ventura County Civil Service Ordinance and Rules and the Ventura County Personnel and Salary Ordinance.

SEC. 39.1. Section 74921.5 of the Government Code is repealed.

SEC. 39.2. Section 74921.5 is added to the Government Code, to read:

74921.5. In Tulare County, the judges of the consolidated superior and municipal courts (hereafter referred to as the "Trial Court") shall, by majority vote, or as otherwise provided by agreement of a majority of the judges, elect one Presiding Judge and one Assistant Presiding Judge of the Trial Court. The Presiding Judge shall carry out the duties required by Rule 205 of the California Rules of Court.

The judges shall, by majority vote, or as otherwise provided by agreement of a majority of the judges, select an Executive Committee consisting of the Presiding Judge, Assistant Presiding Judge, and two judges at-large as voting members, and the Executive Officer and Administrative Officer as nonvoting members. The Executive Committee shall advice and assist the Presiding Judge on all matters relating to administration of the Trial Court, and exercise such other powers and duties as the majority of the judges shall designate.

SEC. 39.3. Section 74921.6 of the Government Code is repealed.

SEC. 39.4. Section 74921.6 is added to the Government Code, to read:

74921.6. The judges of the Trial Court shall meet in February of each year at a time and place to be designated by the Presiding Judge, and more often if necessary upon call in writing of the Presiding Judge. Each judge of the Trial Court shall have one vote. Any judge who does not attend a regular or special meeting may authorize another judge to exercise his or her written proxy, general, or specific, as stated in the proxy. A quorum for the conduct of business

shall require at least 50 percent of the total number of judges eligible to vote (including general but not specific proxies). Any proxy to be effective, must be submitted to the secretary of the meeting prior to the commencement of the vote.

SEC. 39.5. Section 74921.7 of the Government Code is repealed.

SEC. 39.6. Section 74921.7 is added to the Government Code, to read:

74921.7. The judges shall by majority vote appoint an Executive Office for the Trial Court who shall serve at the pleasure of a majority vote of the judges. The Executive Officer shall perform those duties specified in Rule 207 of the California Rules of Court, shall serve as secretary at all meetings of the judges, including the Executive Committee, shall be Jury Commissioner for the Trial Court and shall perform such other duties as are assigned by the Presiding Judge or the Executive Committee.

SEC. 39.7. Section 74921.8 of the Government Code is repealed.

SEC. 39.8. Section 74921.8 is added to the Government Code, to read:

74921.8. In addition to an Executive Officer, the judges shall appoint an Administrative Officer who shall serve at the pleasure of the judges. The Administrative Officer shall perform such duties as are assigned by the Presiding Judge and the Executive Committee.

SEC. 39.9. Section 74921.9 of the Government Code is repealed.

SEC. 40. Section 74921.10 of the Government Code is repealed.

SEC. 40.1. Section 74921.10 is added to the Government Code, to read:

74921.10. There shall also be the following court employee positions, whose numbers and salary range shall be as specified:

Number	Title	Range
1	Administrative Services Officer I	216
1	Administrative Services Officer II	234
1	Assistant Chief Deputy Court Clerk	190
1	Attorney, Superior Court (AW)	254
1	Chief Deputy Court Clerk	205
1	Child Support Court Commissioner	845
1	Collection Supervisor	177
7	Collector I	167
1	Computer Services Technician II	162
1	Commissioner, Municipal Court	987
1	Court Administrator/Court Executive Officer	875
1	Court Administrative Officer	871
14	Court Clerk II	167
16	Court Reporter	220

34	Courtroom Clerk	173
1	Court Commissioner	845
9	Deputy Clerk Administrator II	205
1	Director Family Court Services	235
4	Family Court Mediator II	219
1	Family Law Facilitator	254
1	Family Law Commissioner	845
1	Jury Services Supervisor	178
1	Law Clerk	185
1	Law Library Director	831
22	Legal Clerk II	160
1	Legal Clerk III	170
5	Legal Clerk II - Bilingual	165
1	Legal Processing Supervisor	190
2	Legal Secretary II	181
25	Legal Office Assistant II	147
2	Legal Office Assistant II - Bilingual	152
3	Legal Office Assistant III	157
1	Micro-Computer Network Administrator	217
.6	Master Calendar Clerk	173
1	Municipal Court Services Analyst	221
2	Office Assistant II	137
2	Paralegal	175
1.45	Research Assistant - Law Library	168
7	Senior Account Clerk	153
1	Supervising Calendar Clerk	203

SEC. 40.2. Section 74921.11 of the Government Code is amended to read:

74921.11. Whenever reference is made to a numbered salary range in any section of this article, the salary schedule found in the salary resolution of Tulare County in effect on January 6, 1998, shall apply. The salaries of trial court officers and attachés may be adjusted upon approval of the board of supervisors. Any adjustments shall only be effective to January 1 of the second year following the year in which those adjustments are made, unless ratified by the Legislature.

SEC. 41. Section 74922.5 of the Government Code is repealed.

SEC. 42. Section 74926.6 of the Government Code is repealed.

SEC. 43. Section 74926.7 of the Government Code is amended to read:

74926.7. All officers and attachés of the trial court shall devote their full time to the performance of their duties.

SEC. 44. It is the intent of the Legislature that the enactment of this bill shall not be construed, nor is it intended to be interpreted, as legislative support or opposition regarding the merits of any assertions or pleadings in the pending litigation, L.A. County Employees Association, SEIU, Local 660 v. L.A. Superior Court, Case No. BS051323.

SEC. 45. It is the intent of the Legislature that the enactment of this bill shall not be construed, nor is it intended to be interpreted, as legislative support or opposition regarding the merits of any current or future legal dispute concerning the salary rate of the Judicial Assistant Trainee classification within the Los Angeles County Superior Court.

SEC. 45.5. Section 24.5 of this bill incorporates amendments to Section 74368 of the Government Code proposed by both this bill and Assembly Bill No. 2406. 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 74368 of the Government Code, and (3) this bill is enacted after AB 2406, in which case Section 74368 of the Government Code as amended by AB 2406, shall remain operative only until the operative date of this bill, at which time Section 24.5 of this bill shall become operative, and Section 24 of this bill shall not become operative.

SEC. 45.9. Section 25.5 of this bill incorporates amendments to Section 74370 of the Government Code proposed by both this bill and Assembly Bill No. 2406. 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 74370 of the Government Code, and (3) this bill is enacted after AB 2406, in which case Section 74370 of the Government Code as amended by AB 2406, shall remain operative only until the operative date of this bill, at which time Section 25.5 of this bill shall become operative, and Section 25 of this bill shall not become operative.

CHAPTER 974

An act to amend Section 2025 of the Code of Civil Procedure, relating to depositions.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 29, 1998.]

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

SECTION 1. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in

Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*) and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to

provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and

good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking

to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney,

attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by

attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days

after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter

for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the

deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings.

The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited

purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 2. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*) and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the

discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the

deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section

1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice

may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) On demand of any party or the deponent, the deposition officer shall suspend the taking of testimony to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or

party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under

Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith

attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given and of any changes made by the deponent.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying,

(iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 3. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or

without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*) and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on

which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the

deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under

subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a

protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i). If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is

recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription, unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy

of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or

opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence

applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their

representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 4. Section 2025 of the Code of Civil Procedure is amended to read:

2025. (a) Any party may obtain discovery within the scope delimited by Section 2017, and subject to the restrictions set forth in Section 2019, by taking in California the oral deposition of any person, including any party to the action. The person deposed may be a natural person, an organization such as a public or private corporation, a partnership, an association, or a governmental agency.

(b) Subject to subdivisions (f) and (t), an oral deposition may be taken as follows:

(1) The defendant may serve a deposition notice without leave of court at any time after that defendant has been served or has appeared in the action, whichever occurs first.

(2) The plaintiff may serve a deposition notice without leave of court on any date that is 20 days after the service of the summons on, or appearance by, any defendant. However, on motion with or without notice, the court, for good cause shown, may grant to a plaintiff leave to serve a deposition notice on an earlier date.

(c) A party desiring to take the oral deposition of any person shall give notice in writing in the manner set forth in subdivision (d). However, where under subdivision (d) of Section 2020 only the production by a nonparty of business records for copying is desired, a copy of the deposition subpoena shall serve as the notice of deposition. The notice of deposition shall be given to every other party who has appeared in the action. The deposition notice, or the accompanying proof of service, shall list all the parties or attorneys for parties on whom it is served.

Where, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the subpoenaing party shall serve on that consumer (1) a notice of the deposition, (2) the notice of privacy rights specified in subdivision (e) of Section 1985.3 and in Section 1985.6, and (3) a copy of the deposition subpoena.

(d) The deposition notice shall state all of the following:

(1) The address where the deposition will be taken.

(2) The date of the deposition, selected under subdivision (f), and the time it will commence.

(3) The name of each deponent, and the address and telephone number, if known, of any deponent who is not a party to the action. If the name of the deponent is not known, the deposition notice shall set forth instead a general description sufficient to identify the person or particular class to which the person belongs.

(4) The specification with reasonable particularity of any materials or category of materials to be produced by the deponent.

(5) Any intention to record the testimony by audiotape or videotape, in addition to recording the testimony by the stenographic method as required by paragraph (1) of subdivision (*l*) and any intention to record the testimony by stenographic method, through the instant visual display of the testimony. In the latter event, a copy of the deposition notice shall also be given to the deposition officer. Any offer to provide the instant visual display of the testimony or to provide rough draft transcripts to any party which is accepted prior to, or offered at, the deposition shall also be made by the deposition officer at the deposition to all parties in attendance.

(6) Any intention to reserve the right to use at trial a videotape deposition of a treating or consulting physician or of any expert witness under paragraph (4) of subdivision (u). In this event, the operator of the videotape camera shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties.

If the deponent named is not a natural person, the deposition notice shall describe with reasonable particularity the matters on which examination is requested. In that event, the deponent shall designate and produce at the deposition those of its officers, directors, managing agents, employees, or agents who are most qualified to testify on its behalf as to those matters to the extent of any information known or reasonably available to the deponent. A deposition subpoena shall advise a nonparty deponent of its duty to make this designation, and shall describe with reasonable particularity the matters on which examination is requested.

If the attendance of the deponent is to be compelled by service of a deposition subpoena under Section 2020, an identical copy of that subpoena shall be served with the deposition notice.

(e) (1) The deposition of a natural person, whether or not a party to the action, shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the deponent's residence, or within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise under paragraph (3).

(2) The deposition of an organization that is a party to the action shall be taken at a place that is, at the option of the party giving notice of the deposition, either within 75 miles of the organization's principal executive or business office in California, or within the county where the action is pending and within 150 miles of that office. The deposition of any other organization shall be taken within 75 miles of the organization's principal executive or business office in California, unless the organization consents to a more distant place. If the organization has not designated a principal executive or business office in California, the deposition shall be taken at a place

that is, at the option of the party giving notice of the deposition, either within the county where the action is pending, or within 75 miles of any executive or business office in California of the organization.

(3) A party desiring to take the deposition of a natural person who is a party to the action or an officer, director, managing agent, or employee of a party may make a motion for an order that the deponent attend for deposition at a place that is more distant than that permitted under paragraph (1). This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion.

In exercising its discretion to grant or deny this motion, the court shall take into consideration any factor tending to show whether the interests of justice will be served by requiring the deponent's attendance at that more distant place, including, but not limited to, the following:

(A) Whether the moving party selected the forum.

(B) Whether the deponent will be present to testify at the trial of the action.

(C) The convenience of the deponent.

(D) The feasibility of conducting the deposition by written questions under Section 2028, or of using a discovery method other than a deposition.

(E) The number of depositions sought to be taken at a place more distant than that permitted under paragraph (1).

(F) The expense to the parties of requiring the deposition to be taken within the distance permitted under paragraph (1).

(G) The whereabouts of the deponent at the time for which the deposition is scheduled.

The order may be conditioned on the advancement by the moving party of the reasonable expenses and costs to the deponent for travel to the place of deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to increase travel limits for party deponent, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(f) An oral deposition shall be scheduled for a date at least 10 days after service of the deposition notice. If, as defined in subdivision (a) of Section 1985.3, the party giving notice of the deposition is a subpoenaing party, and the deponent is a witness commanded by a deposition subpoena to produce personal records of a consumer, the deposition shall be scheduled for a date at least 20 days after issuance of that subpoena. However, in unlawful detainer actions, an oral deposition shall be scheduled for a date at least five days after service of the deposition notice, but not later than five days before trial.

On motion or ex parte application of any party or deponent, for good cause shown, the court may shorten or extend the time for scheduling a deposition, or may stay its taking until the determination of a motion for a protective order under subdivision (i).

(g) Any party served with a deposition notice that does not comply with subdivisions (b) to (f), inclusive, waives any error or irregularity unless that party promptly serves a written objection specifying that error or irregularity at least three calendar days prior to the date for which the deposition is scheduled, on the party seeking to take the deposition and any other attorney or party on whom the deposition notice was served. If an objection is made three calendar days before the deposition date, the objecting party shall make personal service of that objection pursuant to Section 1011 on the party who gave notice of the deposition. Any deposition taken after the service of a written objection shall not be used against the objecting party under subdivision (u) if the party did not attend the deposition and if the court determines that the objection was a valid one.

In addition to serving this written objection, a party may also move for an order staying the taking of the deposition and quashing the deposition notice. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of any issue presented by the motion. The taking of the deposition is stayed pending the determination of this motion.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to quash a deposition notice, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(h) (1) The service of a deposition notice under subdivision (c) is effective to require any deponent who is a party to the action or an officer, director, managing agent, or employee of a party to attend and to testify, as well as to produce any document or tangible thing for inspection and copying.

(2) The attendance and testimony of any other deponent, as well as the production by the deponent of any document or tangible thing for inspection and copying, requires the service on the deponent of a deposition subpoena under Section 2020.

(i) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion.

The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or

oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(3) That a videotape deposition of a treating or consulting physician or of any expert witness, intended for possible use at trial under paragraph (4) of subdivision (u), be postponed until the moving party has had an adequate opportunity to prepare, by discovery deposition of the deponent, or other means, for cross-examination.

(4) That the deposition be taken at a place other than that specified in the deposition notice, if it is within a distance permitted by subdivision (e).

(5) That the deposition be taken only on certain specified terms and conditions.

(6) That the deponent's testimony be taken by written, instead of oral, examination.

(7) That the method of discovery be interrogatories to a party instead of an oral deposition.

(8) That the testimony be recorded in a manner different from that specified in the deposition notice.

(9) That certain matters not be inquired into.

(10) That the scope of the examination be limited to certain matters.

(11) That all or certain of the writings or tangible things designated in the deposition notice not be produced, inspected, or copied.

(12) That designated persons, other than the parties to the action and their officers and counsel, be excluded from attending the deposition.

(13) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only to specified persons or only in a specified way.

(14) That the parties simultaneously file specified documents enclosed in sealed envelopes to be opened as directed by the court.

(15) That the deposition be sealed and thereafter opened only on order of the court.

If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(j) (1) If the party giving notice of a deposition fails to attend or proceed with it, the court shall impose a monetary sanction under

Section 2023 against that party, or the attorney for that party, or both, and in favor of any party attending in person or by attorney, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If a deponent does not appear for a deposition because the party giving notice of the deposition failed to serve a required deposition subpoena, the court shall impose a monetary sanction under Section 2023 against that party, or the attorney for that party, or both, in favor of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, unless the court finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent on whom a deposition subpoena has been served fails to attend a deposition or refuses to be sworn as a witness, the court may impose on the deponent the sanctions described in subdivision (h) of Section 2020.

(3) If, after service of a deposition notice, a party to the action or an officer, director, managing agent, or employee of a party, or a person designated by an organization that is a party under subdivision (d), without having served a valid objection under subdivision (g), fails to appear for examination, or to proceed with it, or to produce for inspection any document or tangible thing described in the deposition notice, the party giving the notice may move for an order compelling the deponent's attendance and testimony, and the production for inspection of any document or tangible thing described in the deposition notice. This motion (A) shall set forth specific facts showing good cause justifying the production for inspection of any document or tangible thing described in the deposition notice, and (B) shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by it or, when the deponent fails to attend the deposition and produce the documents or things described in the deposition notice, by a declaration stating that the petitioner has contacted the deponent to inquire about the nonappearance. If this motion is granted, the court shall also impose a monetary sanction under Section 2023 against the deponent or the party with whom the deponent is affiliated, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust. On motion of any other party who, in person or by attorney, attended at the time and place specified in the deposition notice in the expectation that the deponent's testimony would be taken, the court shall also impose a monetary sanction under Section 2023, unless it finds that the one subject to the sanction acted with

substantial justification or that other circumstances make the imposition of the sanction unjust.

If that party or party-affiliated deponent then fails to obey an order compelling attendance, testimony, and production, the court may make those orders that are just, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023 against that party deponent or against the party with whom the deponent is affiliated. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that deponent or against the party with whom that party deponent is affiliated, and in favor of any party who, in person or by attorney, attended in the expectation that the deponent's testimony would be taken pursuant to that order.

(k) Except as provided in paragraph (3) of subdivision (d) of Section 2020, the deposition shall be conducted under the supervision of an officer who is authorized to administer an oath. This officer shall not be financially interested in the action and shall not be a relative or employee of any attorney of any of the parties, or of any of the parties. Any objection to the qualifications of the deposition officer is waived unless made before the deposition begins or as soon thereafter as the ground for that objection becomes known or could be discovered by reasonable diligence.

(*l*) (1) The deposition officer shall put the deponent under oath. Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. The party noticing the deposition may also record the testimony by audiotape or videotape if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make a simultaneous audiotape or videotape record of the deposition, provided that other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to audiotape or videotape the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under subdivision (c), and on any deponent whose attendance is being compelled by a deposition subpoena under Section 2020. If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011. Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(2) If the deposition is being recorded by means of audiotape or videotape, the following procedure shall be observed:

(A) The area used for recording the deponent's oral testimony shall be suitably large, adequately lighted, and reasonably quiet.

(B) The operator of the recording equipment shall be competent to set up, operate, and monitor the equipment in the manner prescribed in this subdivision. The operator may be an employee of the attorney taking the deposition unless the operator is also the deposition officer. However, if a videotape of deposition testimony is to be used under paragraph (4) of subdivision (u), the operator of the recording equipment shall be a person who is authorized to administer an oath, and shall not be financially interested in the action or be a relative or employee of any attorney of any of the parties, unless all parties attending the deposition agree on the record to waive these qualifications and restrictions.

(C) The operator shall not distort the appearance or the demeanor of participants in the deposition by the use of camera or sound recording techniques.

(D) The deposition shall begin with an oral or written statement on camera or on the audiotape that includes the operator's name and business address, the name and business address of the operator's employer, the date, time, and place of the deposition, the caption of the case, the name of the deponent, a specification of the party on whose behalf the deposition is being taken, and any stipulations by the parties.

(E) Counsel for the parties shall identify themselves on camera or on the audiotape.

(F) The oath shall be administered to the deponent on camera or on the audiotape.

(G) If the length of a deposition requires the use of more than one unit of tape, the end of each unit and the beginning of each succeeding unit shall be announced on camera or on the audiotape.

(H) At the conclusion of a deposition, a statement shall be made on camera or on the audiotape that the deposition is ended and shall set forth any stipulations made by counsel concerning the custody of the audiotape or videotape recording and the exhibits, or concerning other pertinent matters.

(I) A party intending to offer an audiotaped or videotaped recording of a deposition in evidence under subdivision (u) shall notify the court and all parties in writing of that intent and of the parts of the deposition to be offered within sufficient time for objections to be made and ruled on by the judge to whom the case is assigned for trial or hearing, and for any editing of the tape. Objections to all or part of the deposition shall be made in writing. The court may permit further designations of testimony and objections as justice may require. With respect to those portions of an audiotaped or videotaped deposition that are not designated by any party or that are ruled to be objectionable, the court may order that the party offering the recording of the deposition at the trial or hearing suppress those portions, or that an edited version of the deposition tape be prepared for use at the trial or hearing. The original audiotape or videotape of the deposition shall be preserved

unaltered. If no stenographic record of the deposition testimony has previously been made, the party offering a videotape or an audiotape recording of that testimony under subdivision (u) shall accompany that offer with a stenographic transcript prepared from that recording.

(3) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

(m) (1) The protection of information from discovery on the ground that it is privileged or that it is protected work product under Section 2018 is waived unless a specific objection to its disclosure is timely made during the deposition.

(2) Errors and irregularities of any kind occurring at the oral examination that might be cured if promptly presented are waived unless a specific objection to them is timely made during the deposition. These errors and irregularities include, but are not limited to, those relating to the manner of taking the deposition, to the oath or affirmation administered, to the conduct of a party, attorney, deponent, or deposition officer, or to the form of any question or answer. Unless the objecting party demands that the taking of the deposition be suspended to permit a motion for a protective order under subdivision (n), the deposition shall proceed subject to the objection.

(3) Objections to the competency of the deponent, or to the relevancy, materiality, or admissibility at trial of the testimony or of the materials produced are unnecessary and are not waived by failure to make them before or during the deposition.

(4) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking that answer or production may adjourn the deposition or complete the examination on other matters without waiving the right at a later time to move for an order compelling that answer or production under subdivision (o).

(n) The deposition officer shall not suspend the taking of testimony without stipulation of the party conducting the deposition and the deponent unless any party attending the deposition or the deponent demands the taking of testimony be suspended to enable that party or deponent to move for a protective order on the ground that the examination is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses that deponent or party. This motion shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. The court, for good cause shown, may terminate the examination or may limit the scope and manner of taking the deposition as provided in subdivision (i).

If the order terminates the examination, the deposition shall not thereafter be resumed, except on order of the court.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion for this protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(o) If a deponent fails to answer any question or to produce any document or tangible thing under the deponent's control that is specified in the deposition notice or a deposition subpoena, the party seeking discovery may move the court for an order compelling that answer or production. This motion shall be made no later than 60 days after the completion of the record of the deposition, and shall be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion. Notice of this motion shall be given to all parties, and to the deponent either orally at the examination, or by subsequent service in writing. If the notice of the motion is given orally, the deposition officer shall direct the deponent to attend a session of the court at the time specified in the notice. Not less than five days prior to the hearing on this motion, the moving party shall lodge with the court a certified copy of any parts of the stenographic transcript of the deposition that are relevant to the motion. If a deposition is recorded by audiotape or videotape, the moving party is required to lodge a certified copy of a transcript of any parts of the deposition that are relevant to the motion. If the court determines that the answer or production sought is subject to discovery, it shall order that the answer be given or the production be made on the resumption of the deposition.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to compel answer or production, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

If a deponent fails to obey an order entered under this subdivision, the failure may be considered a contempt of court. In addition, if the disobedient deponent is a party to the action or an officer, director, managing agent, or employee of a party, the court may make those orders that are just against the disobedient party, or against the party with whom the disobedient deponent is affiliated, including the imposition of an issue sanction, an evidence sanction, or a terminating sanction under Section 2023. In lieu of or in addition to this sanction, the court may impose a monetary sanction under Section 2023 against that party deponent or against any party with whom the deponent is affiliated.

(p) Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed. The party noticing the deposition shall bear the cost of that transcription,

unless the court, on motion and for good cause shown, orders that the cost be borne or shared by another party. Any other party, at that party's expense, may obtain a copy of the transcript. If the deposition officer receives a request from a party for an original or a copy of the deposition transcript, or any portion thereof, and the document will be available to that party prior to the time the original or copy would be available to any other party, the deposition officer shall immediately notify all other parties attending the deposition of the request, and shall, upon request by any party other than the party making the original request, make that copy of the full or partial deposition transcript available to all parties at the same time. Stenographic notes of depositions shall be retained by the reporter for a period of not less than eight years from the date of the deposition, where no transcript is produced, and not less than one year from the date on which the transcript is produced. Those notes may be either on paper or electronic media, as long as it allows for satisfactory production of a transcript at any time during the periods specified. At the request of any other party to the action, including a party who did not attend the taking of the deposition testimony, any party who records or causes the recording of that testimony by means of audiotape or videotape shall promptly (1) permit that other party to hear the audiotape or to view the videotape, and (2) furnish a copy of the audiotape or videotape to that other party on receipt of payment of the reasonable cost of making that copy of the tape.

If the testimony at the deposition is recorded both stenographically, and by audiotape or videotape, the stenographic transcript is the official record of that testimony for the purpose of the trial and any subsequent hearing or appeal.

(q) (1) If the deposition testimony is stenographically recorded, the deposition officer shall send written notice to the deponent and to all parties attending the deposition when the original transcript of the testimony for each session of the deposition is available for reading, correcting, and signing, unless the deponent and the attending parties agree on the record that the reading, correcting, and signing of the transcript of the testimony will be waived or that the reading, correcting, and signing of a transcript of the testimony will take place after the entire deposition has been concluded or at some other specific time. For 30 days following each such notice, unless the attending parties and the deponent agree on the record or otherwise in writing to a longer or shorter time period, the deponent may change the form or the substance of the answer to a question, and may either approve the transcript of the deposition by signing it, or refuse to approve the transcript by not signing it.

Alternatively, within this same period, the deponent may change the form or the substance of the answer to any question and may approve or refuse to approve the transcript by means of a letter to the deposition officer signed by the deponent which is mailed by certified or registered mail with return receipt requested. A copy of

that letter shall be sent by first-class mail to all parties attending the deposition. For good cause shown, the court may shorten the 30-day period for making changes, approving, or refusing to approve the transcript.

The deposition officer shall indicate on the original of the transcript, if the deponent has not already done so at the office of the deposition officer, any action taken by the deponent and indicate on the original of the transcript, the deponent's approval of, or failure or refusal to approve, the transcript. The deposition officer shall also notify in writing the parties attending the deposition of any changes which the deponent timely made in person. If the deponent fails or refuses to approve the transcript within the allotted period, the deposition shall be given the same effect as though it had been approved, subject to any changes timely made by the deponent. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the failure or refusal to approve the transcript require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(2) If there is no stenographic transcription of the deposition, the deposition officer shall send written notice to the deponent and to all parties attending the deposition that the recording is available for review, unless the deponent and all these parties agree on the record to waive the hearing or viewing of an audiotape or videotape recording of the testimony. For 30 days following this notice the deponent, either in person or by signed letter to the deposition officer, may change the substance of the answer to any question.

The deposition officer shall set forth in a writing to accompany the recording any changes made by the deponent, as well as either the deponent's signature identifying the deposition as his or her own, or a statement of the deponent's failure to supply the signature, or to contact the officer within the allotted period. When a deponent fails to contact the officer within the allotted period, or expressly refuses by a signature to identify the deposition as his or her own, the deposition shall be given the same effect as though signed. However, on a seasonable motion to suppress the deposition, accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of each issue presented by the motion, the court may determine that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

The court shall impose a monetary sanction under Section 2023 against any party, person, or attorney who unsuccessfully makes or

opposes a motion to suppress a deposition, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

(r) (1) The deposition officer shall certify on the transcript of the deposition, or in a writing accompanying an audiotaped or videotaped deposition as described in paragraph (2) of subdivision (q), that the deponent was duly sworn and that the transcript or recording is a true record of the testimony given.

(2) When prepared as a rough draft transcript, the transcript of the deposition may not be certified and may not be used, cited, or transcribed as the certified transcript of the deposition proceedings. The rough draft transcript may not be cited or used in any way or at any time to rebut or contradict the certified transcript of deposition proceedings as provided by the deposition officer.

(s) (1) The certified transcript of a deposition shall not be filed with the court. Instead, the deposition officer shall securely seal that transcript in an envelope or package endorsed with the title of the action and marked: "Deposition of (here insert name of deponent)," and shall promptly transmit it to the attorney for the party who noticed the deposition. This attorney shall store it under conditions that will protect it against loss, destruction, or tampering.

The attorney to whom the transcript of a deposition is transmitted shall retain custody of it until six months after final disposition of the action. At that time, the transcript may be destroyed, unless the court, on motion of any party and for good cause shown, orders that the transcript be preserved for a longer period.

(2) An audiotape or videotape record of deposition testimony, including a certified tape made by an operator qualified under subparagraph (B) of paragraph (2) of subdivision (*l*), shall not be filed with the court. Instead, the operator shall retain custody of that record and shall store it under conditions that will protect it against loss, destruction, or tampering, and preserve as far as practicable the quality of the tape and the integrity of the testimony and images it contains.

At the request of any party to the action, including a party who did not attend the taking of the deposition testimony, or at the request of the deponent, that operator shall promptly (A) permit the one making the request to hear or to view the tape on receipt of payment of a reasonable charge for providing the facilities for hearing or viewing the tape, and (B) furnish a copy of the audiotape or the videotape recording to the one making the request on receipt of payment of the reasonable cost of making that copy of the tape.

The attorney or operator who has custody of an audiotape or videotape record of deposition testimony shall retain custody of it until six months after final disposition of the action. At that time, the audiotape or videotape may be destroyed or erased, unless the court, on motion of any party and for good cause shown, orders that the tape be preserved for a longer period.

(t) Once any party has taken the deposition of any natural person, including that of a party to the action, neither the party who gave, nor any other party who has been served with a deposition notice pursuant to subdivision (c) may take a subsequent deposition of that deponent. However, for good cause shown, the court may grant leave to take a subsequent deposition, and the parties, with the consent of any deponent who is not a party, may stipulate that a subsequent deposition be taken. This subdivision does not preclude taking one subsequent deposition of a natural person who has previously been examined (1) as a result of that person's designation to testify on behalf of an organization under subdivision (d), or (2) for the limited purpose of discovering pursuant to Section 485.230 the identity, location, and value of property in which the deponent has an interest. This subdivision does not authorize the taking of more than one deposition for the limited purpose of Section 485.230.

(u) At the trial or any other hearing in the action, any part or all of a deposition may be used against any party who was present or represented at the taking of the deposition, or who had due notice of the deposition and did not serve a valid objection under subdivision (g), so far as admissible under the rules of evidence applied as though the deponent were then present and testifying as a witness, in accordance with the following provisions:

(1) Any party may use a deposition for the purpose of contradicting or impeaching the testimony of the deponent as a witness, or for any other purpose permitted by the Evidence Code.

(2) An adverse party may use for any purpose, a deposition of a party to the action, or of anyone who at the time of taking the deposition was an officer, director, managing agent, employee, agent, or designee under subdivision (d) of a party. It is not ground for objection to the use of a deposition of a party under this paragraph by an adverse party that the deponent is available to testify, has testified, or will testify at the trial or other hearing.

(3) Any party may use for any purpose the deposition of any person or organization, including that of any party to the action, if the court finds any of the following:

(A) The deponent resides more than 150 miles from the place of the trial or other hearing.

(B) The deponent, without the procurement or wrongdoing of the proponent of the deposition for the purpose of preventing testimony in open court, is (i) exempted or precluded on the ground of privilege from testifying concerning the matter to which the deponent's testimony is relevant, (ii) disqualified from testifying, (iii) dead or unable to attend or testify because of existing physical or mental illness or infirmity, (iv) absent from the trial or other hearing and the court is unable to compel the deponent's attendance by its process, or (v) absent from the trial or other hearing and the proponent of the deposition has exercised reasonable diligence but

has been unable to procure the deponent's attendance by the court's process.

(C) Exceptional circumstances exist that make it desirable to allow the use of any deposition in the interests of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(4) Any party may use a videotape deposition of a treating or consulting physician or of any expert witness even though the deponent is available to testify if the deposition notice under subdivision (d) reserved the right to use the deposition at trial, and if that party has complied with subparagraph (I) of paragraph (2) of subdivision (*l*).

(5) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if the party introduces only part of the deposition, any other party may introduce any other parts that are relevant to the parts introduced.

(6) Substitution of parties does not affect the right to use depositions previously taken.

(7) When an action has been brought in any court of the United States or of any state, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the initial action may be used in the subsequent action as if originally taken in that subsequent action. A deposition previously taken may also be used as permitted by the Evidence Code.

SEC. 5. (a) Section 2 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by both this bill and AB 1094. 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 2025 of the Code of Civil Procedure, (3) SB 2145 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1094, in which case Sections 1, 3, and 4 of this bill shall not become operative.

(b) Section 3 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by both this bill and SB 2145. 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 2025 of the Code of Civil Procedure, (3) AB 1094 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2145 in which case Sections 1, 2, and 4 of this bill shall not become operative.

(c) Section 4 of this bill incorporates amendments to Section 2025 of the Code of Civil Procedure proposed by this bill, AB 1094, and SB 2145. 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 2025 of the Code of Civil Procedure, and (3) this bill

is enacted after AB 1094 and SB 2145, in which case Sections 1, 2, and 3 of this bill shall not become operative.

CHAPTER 975

An act to add Article 5.6 (commencing with Section 14185) to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, relating to human services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Article 5.6 (commencing with Section 14185) is added to Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 5.6. Drug Utilization Under Medi-Cal Managed Care Programs

14185. (a) A managed care plan, as defined in accordance with subdivision (a) of Section 14093.05, that has prescription drugs as one of its benefits and that enters into a contract with the department pursuant to this chapter or Chapter 8 (commencing with Section 14200), shall ensure the timely and efficient processing of authorization requests for drugs, when prescribed for plan enrollees, that are covered under the terms of the plan's contract with the department and require prior authorization from the plan, by providing both of the following:

(1) A response within 24 hours or one business day to a request for prior authorization made by telephone or other telecommunication device.

(2) The dispensing of at least a 72-hour supply of a covered outpatient drug in an emergency situation.

(b) A managed care plan, as defined in accordance with subdivision (a) of Section 14093.05, that has prescription drugs as one of its benefits and that enters into a contract with the department pursuant to this chapter or Chapter 8 (commencing with Section 14200), shall permit a Medi-Cal beneficiary enrolled in the plan to continue use of a single-source drug which is part of a prescribed therapy in effect for the beneficiary immediately prior to the date of enrollment, whether or not the drug is covered by the plan, until the prescribed therapy is no longer prescribed by the contracting physician.

(c) This section shall not alter or affect the terms of a contract between the department and a managed care plan regarding the responsibilities of the plan to cover prescription drugs prescribed by a physician other than the treating or attending physician of the plan.

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 apply this act to the full 1998–99 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 976

An act to amend Section 1011 of the Military and Veterans Code, relating to veterans.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1011 of the Military and Veterans Code is amended to read:

1011. (a) There is in the department a Veterans' Home of California Yountville, situated at Veterans' Home, Napa County.

(b) (1) The department may establish and construct a second home that shall be situated in the County of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, or Ventura. The home may be located on one or more sites. The department shall operate the second home concurrently with the first home.

(2) The initial site is the Veterans' Home of California, Barstow, situated in Barstow, San Bernardino County. That site may provide skilled nursing care for up to 250 residents.

(3) When completed, the second site shall be the Veterans' Home of California, Chula Vista, situated in Chula Vista, San Diego County, pursuant to the recommendations made by the commission established pursuant to Section 1011.5.

(4) When completed, the third site shall be the Veterans' Home of California, Lancaster, situated in Lancaster, Los Angeles County, pursuant to the recommendations made by the commission established pursuant to Section 1011.5.

(5) When completed, the fourth site shall be the Veterans' Home of California, Ventura, situated in the community of Saticoy, Ventura County.

(6) There shall be an administrator for, and located at, each site of the southern California home.

(7) The department may complete any preapplication process necessary with the United States Department of Veterans Affairs for construction of the second home.

(c) The Legislature hereby finds and declares that the second home is a new state function. The department may perform any or all work in operating the second home by independent contractors, except the overall administration and management of the home. Any and all actions of the department taken before September 17, 1996, that are consistent with this subdivision are hereby ratified and confirmed, it having at all times been the intent of the Legislature that the department be so authorized.

CHAPTER 977

An act to amend Section 14089 of the Welfare and Institutions Code, relating to health services.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. 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) to (f), inclusive.

(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.

CHAPTER 978

An act to amend Section 43601 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 43601 of the Public Resources Code is amended to read:

43601. (a) The evidence of financial ability shall be sufficient to meet the closure and postclosure maintenance costs when needed.

(b) The owner or operator of a solid waste landfill shall provide evidence of financial ability through the use of any of the mechanisms set forth in Part 258 (commencing with Section 258.1) of Title 40 of the Code of Federal Regulations or through the use of any other mechanisms approved by the board. However, the board may adopt regulations that reasonably condition the use of one or more of those mechanisms to ensure adequate protection of public health and safety and the environment, but shall not exclude the use of any mechanism permitted under federal law. In addition, the evidence of financial ability submitted pursuant to Section 43600 shall provide that funds shall be available to the regional water boards upon the issuance of any order under Chapter 5 (commencing with Section

13300) of Division 7 of the Water Code to implement closure and postclosure activities.

(c) The state water board or the appropriate regional water board shall have access to the financial assurance funds for closure and postclosure activities, and to financial assurance funds for corrective action, as necessary, to address water quality problems, if the owner or operator of the solid waste landfill has failed to implement the required closure and postclosure activities or corrective action activities.

(d) The owner or operator may request disbursement for expenditures to conduct closure, postclosure maintenance, or corrective actions from the financial assurance mechanism established for that activity. Requests for disbursement shall be granted by the board only if sufficient funds are remaining in the financial assurance mechanism to cover the remaining approved total costs of closure, postclosure maintenance, or corrective actions, as appropriate.

(e) If the evidence of financial ability for closure, postclosure, or corrective action is demonstrated by use of insurance, the board may approve the insurance mechanism if it is in compliance with either paragraph (1) or (2) as follows:

(1) The issuer of the insurance policy is either:

(A) Licensed by the Department of Insurance to transact the business of insurance in the State of California as an admitted carrier.

(B) Eligible to provide insurance as an excess and surplus lines insurer in California through a surplus lines broker currently licensed under the regulations of the Department of Insurance and upon the terms and conditions prescribed by the Department of Insurance.

(2) If the insurance carrier is established by a solid waste facility operator to meet the financial assurance obligations of that operator, insurance may be approved by the board that meets all of the following requirements:

(A) The insurance mechanism is in full compliance with the requirements for insurance that are specified in subdivision (d) of Section 258.74 of Title 40 of the Code of Federal Regulations.

(B) The insurance carrier is an insurer domiciled in the United States and licensed in its state of domicile to write that insurance.

(C) The insurance carrier only provides financial assurance to the operator that has established the insurance carrier as a form of self-insurance and does not engage in the business of marketing, brokering, or providing insurance coverage to other parties.

(D) The insurance carrier shall maintain a rating of A- or better by A.M. Best, or other equivalent rating by any other agency acceptable to the board.

(E) If requested by the board, an independent financial audit report evaluating the assets and liabilities of the insurance carrier and confirming compliance with the statutory and regulatory requirements of the state of domicile and an independent actuarial

opinion on the independence and financial soundness of the insurance carrier by an actuary in good standing with the Casualty Actuarial Society or the American Academy of Actuaries regarding the adequacy of the loss reserves maintained by the insurance carrier shall be submitted to the board upon application and annually thereafter.

(f) A solid waste facility operator using or proposing to use an insurance company to demonstrate financial assurance may be required by the board to pay a fee for the actual and necessary cost of reviewing information submitted by the operator pursuant to paragraph (2) of subdivision (e) up to an amount not to exceed ten thousand dollars ($10,000), unless a higher amount is mutually agreed to by the operator and the board.

(g) The funds collected pursuant to subdivision (f) shall be deposited in the Integrated Waste Management Account and shall be available, upon appropriation by the Legislature, for expenditure by the board to fund the review specified in subdivision (f).

CHAPTER 979

An act to amend Section 1345 of, and to add Sections 1363.2, 1371.5, and 1797.114 to, the Health and Safety Code, and to add Section 10126.6 to the Insurance Code, relating to emergency "911" telephone systems.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1345 of the Health and Safety Code is amended to read:

1345. As used in this chapter:

(a) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or by radio, television, or similar communications media, published in connection with the offer or sale of plan contracts.

(b) "Basic health care services" means all of the following:

(1) Physician services, including consultation and referral.

(2) Hospital inpatient services and ambulatory care services.

(3) Diagnostic laboratory and diagnostic and therapeutic radiologic services.

(4) Home health services.

(5) Preventive health services.

(6) Emergency health care services, including ambulance and ambulance transport services and out-of-area coverage. "Basic health

care services" includes ambulance and ambulance transport services provided through the "911" emergency response system.

(c) "Enrollee" means a person who is enrolled in a plan and who is a recipient of services from the plan.

(d) "Evidence of coverage" means any certificate, agreement, contract, brochure, or letter of entitlement issued to a subscriber or enrollee setting forth the coverage to which the subscriber or enrollee is entitled.

(e) "Group contract" means a contract which by its terms limits the eligibility of subscribers and enrollees to a specified group.

(f) "Health care service plan" means any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(g) "License" means, and "licensed" refers to, a license as a plan pursuant to Section 1353.

(h) "Out-of-area coverage," for purposes of paragraph (6) of subdivision (b), means coverage while an enrollee is anywhere outside the service area of the plan, and shall also include coverage for urgently needed services to prevent serious deterioration of an enrollee's health resulting from unforeseen illness or injury for which treatment cannot be delayed until the enrollee returns to the plan's service area.

(i) "Provider" means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services.

(j) "Person" means any person, individual, firm, association, organization, partnership, business trust, foundation, labor organization, corporation, limited liability company, public agency, or political subdivision of the state.

(k) "Service area" means a geographical area designated by the plan within which a plan shall provide health care services.

(*l*) "Solicitation" means any presentation or advertising conducted by, or on behalf of, a plan, where information regarding the plan, or services offered and charges therefor, is disseminated for the purpose of inducing persons to subscribe to, or enroll in, the plan.

(m) "Solicitor" means any person who engages in the acts defined in subdivision (k) of this section.

(n) "Solicitor firm" means any person, other than a plan, who through one or more solicitors engages in the acts defined in subdivision (k) of this section.

(o) "Specialized health care service plan contract" means a contract for health care services in a single specialized area of health care, including dental care, for subscribers or enrollees, or which pays for or which reimburses any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(p) "Subscriber" means the person who is responsible for payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan.

(q) Unless the context indicates otherwise, "plan" refers to health care service plans and specialized health care service plans.

(r) "Plan contract" means a contract between a plan and its subscribers or enrollees or a person contracting on their behalf pursuant to which health care services, including basic health care services, are furnished; and unless the context otherwise indicates it includes specialized health care service plan contracts; and unless the context otherwise indicates it includes group contracts.

(s) All references in this chapter to financial statements, assets, liabilities, and other accounting items mean those financial statements and accounting items prepared or determined in accordance with generally accepted accounting principles, and fairly presenting the matters which they purport to present, subject to any specific requirement imposed by this chapter or by the commissioner.

(t) This section shall become operative April 1, 1993.

SEC. 2. Section 1363.2 is added to the Health and Safety Code, to read:

1363.2. On or before July 1, 1999, the disclosure form required pursuant to Section 1363 shall also contain a statement that enrollees are encouraged to use appropriately the "911" emergency response system, in areas where the system is established and operating, when they have an emergency medical condition that requires an emergency response.

SEC. 3. Section 1371.5 is added to the Health and Safety Code, to read:

1371.5. (a) No health care service plan that provides basic health care services shall require prior authorization or refuse to pay for any ambulance or ambulance transport services, referred to in paragraph (6) of subdivision (b) of Section 1345, provided to an enrollee as a result of a "911" emergency response system request for assistance if either of the following conditions apply:

(1) The request was made for an emergency medical condition and ambulance transport services were required.

(2) An enrollee reasonably believed that the medical condition was an emergency medical condition and reasonably believed that the condition required ambulance transport services.

(b) As used in this section, "emergency medical condition" has the same meaning as in Section 1317.1.

(c) The determination as to whether an enrollee reasonably believed that the medical condition was an emergency medical condition that required an emergency response shall not be based solely upon a retrospective analysis of the level of care eventually

provided to, or a final discharge of, the person who received emergency assistance.

(d) A health care service plan shall not be required to pay for any ambulance or ambulance transport services if the health care service plan determines that the ambulance or ambulance transport services were never performed, an emergency condition did not exist, or upon findings of fraud, incorrect billings, the provision of services that were not covered under the member's current benefit plan, or membership that was invalid at the time services were delivered for the pending emergency claim.

SEC. 4. Section 1797.114 is added to the Health and Safety Code, to read:

1797.114. The rules and regulations of the authority established pursuant to Section 1797.107 shall include a requirement that a local EMS agency local plan developed pursuant to this division shall require that in providing emergency medical transportation services to any patient, the patient shall be transported to the closest appropriate medical facility, if the emergency health care needs of the patient dictate this course of action. Emergency health care need shall be determined by the prehospital emergency medical care personnel under the direction of a base hospital physician and surgeon or in conformance with the regulations of the authority adopted pursuant to Section 1797.107.

SEC. 5. Section 10126.6 is added to the Insurance Code, to read:

10126.6. (a) Every policy of disability insurance that provides hospital, medical, or surgical coverage under a health benefit plan, defined in subdivision (a) of Section 10198.6, that provides coverage for emergency health care services, that is issued, amended, delivered, or renewed in this state on or after January 1, 1999, shall include coverage for emergency medical transportation services, as defined in subdivision (b). This coverage shall be provided without regard to whether the emergency provider has a contractual arrangement with the insurer or whether there was prior authorization, subject to the terms and conditions of the policy.

(b) For purposes of this section, "emergency medical transportation services" means ambulance services provided through the "911" emergency response system.

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 980

An act to amend Sections 15630 and 15633 of, and to add Section 15653.5 to, the Welfare and Institutions Code, relating to elder abuse.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 15630 of the Welfare and Institutions Code is amended to read:

15630. (a) Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.

(b) (1) Any mandated reporter, who, in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect, or reasonably suspects abuse shall report the known or suspected instance of abuse by telephone immediately or as soon as practically possible, and by written report sent within two working days, as follows:

(A) If the abuse has occurred in a long-term care facility, except a state mental health hospital or a state developmental center, the report shall be made to the local ombudsman or the local law enforcement agency.

Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(B) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report shall be made to designated investigators of the State Department of Mental Health or the State Department of Developmental Services or to the local law enforcement agency.

Except in an emergency, the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(C) If the abuse has occurred any place other than one described in subparagraph (A), the report shall be made to the adult protective services agency or the local law enforcement agency.

(2) (A) A mandated reporter shall not be required to report, as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter has been told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect.

(ii) The mandated reporter is not aware of any independent evidence that corroborates the statement that the abuse has occurred.

(iii) The elder or dependent adult has been diagnosed with a mental illness, defect, dementia, or incapacity, or is the subject of a court-ordered conservatorship because of a mental illness, defect, dementia, or incapacity.

(iv) The mandated reporter reasonably believes that the abuse did not occur.

(B) This paragraph shall not be construed to impose upon mandated reporters a duty to investigate a known or suspected incident of abuse and shall not be construed to lessen or restrict any existing duty of mandated reporters.

(3) (A) In a long-term care facility, a mandated reporter shall not be required to report as a suspected incident of abuse, as defined in Section 15610.07, an incident where all of the following conditions exist:

(i) The mandated reporter is aware that there is a proper plan of care.

(ii) The mandated reporter is aware that the plan of care was properly provided or executed.

(iii) A physical, mental, or medical injury occurred as a result of care provided pursuant to clause (i) or (ii).

(iv) The mandated reporter reasonably believes that the injury was not the result of abuse.

(B) This paragraph shall not be construed to require a mandated reporter to seek, nor to preclude a mandated reporter from seeking, information regarding a known or suspected incident of abuse prior to reporting. This paragraph shall apply only to those categories of mandated reporters that the State Department of Health Services determines, upon approval by the Bureau of Medi-Cal Fraud and the state long-term care ombudsman, have access to plans of care and have the training and experience necessary to determine whether the conditions specified in this section have been met.

(c) (1) Any mandated reporter who has knowledge of, or reasonably suspects that, types of elder or dependent adult abuse for

which reports are not mandated have been inflicted upon an elder or dependent adult or that his or her emotional well-being is endangered in any other way, may report the known or suspected instance of abuse.

(2) If the suspected or alleged abuse occurred in a long-term care facility other than a state mental health hospital or a state developmental center, the report may be made to the long-term care ombudsman program. Except in an emergency, the local ombudsman shall report any case of known or suspected abuse to the State Department of Health Services and any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(3) If the suspected or alleged abuse occurred in a state mental health hospital or a state developmental center, the report may be made to the designated investigator of the State Department of Mental Health or the State Department of Developmental Services, or to a local law enforcement agency or to the local ombudsman. Except in an emergency, the local ombudsman and the local law enforcement agency shall report any case of known or suspected criminal activity to the Bureau of Medi-Cal Fraud, as soon as is practical.

(4) If the suspected or alleged abuse occurred in a place other than a place described in paragraph (2) or (3), the report may be made to the county adult protective services agency.

(5) If the conduct involves criminal activity not covered in subdivision (b), it may be immediately reported to the appropriate law enforcement agency.

(d) When two or more mandated reporters are present and jointly have knowledge or reasonably suspect that types of abuse of an elder or a dependent adult for which a report is or is not mandated have occurred, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement, and a single report may be made and signed by the selected member of the reporting team. Any member who has knowledge that the member designated to report has failed to do so shall thereafter make the report.

(e) A telephone report of a known or suspected instance of elder or dependent adult abuse shall include the name of the person making the report, the name and age of the elder or dependent adult, the present location of the elder or dependent adult, the names and addresses of family members or any other person responsible for the elder or dependent adult's care, if known, the nature and extent of the elder or dependent adult's condition, the date of the incident, and any other information, including information that led that person to suspect elder or dependent adult abuse, requested by the agency receiving the report.

(f) The reporting duties under this section are individual, and no supervisor or administrator shall impede or inhibit the reporting

duties, and no person making the report shall be subject to any sanction for making the report. However, internal procedures to facilitate reporting, ensure confidentiality, and apprise supervisors and administrators of reports may be established, provided they are not inconsistent with this chapter.

(g) (1) Whenever this section requires a county adult protective services agency to report to a law enforcement agency, the law enforcement agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that county adult protective services agency.

(2) Whenever this section requires a law enforcement agency to report to a county adult protective services agency, the county adult protective services agency shall, immediately upon request, provide a copy of its investigative report concerning the reported matter to that law enforcement agency.

(3) The requirement to disclose investigative reports pursuant to this subdivision shall not include the disclosure of social services records or case files that are confidential, nor shall this subdivision be construed to allow disclosure of any reports or records if the disclosure would be prohibited by any other provision of state or federal law.

(h) Failure to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, is a misdemeanor, punishable by not more that six months in the county jail or by a fine of not more than one thousand dollars ($1,000), or by both that fine and imprisonment. Any mandated reporter who willfully fails to report physical abuse, abandonment, isolation, financial abuse, or neglect of an elder or dependent adult, in violation of this section, where that abuse results in death or great bodily injury, is punishable by not more than one year in a county jail or by a fine of not more than five thousand dollars ($5,000) or by both that fine and imprisonment.

SEC. 2. Section 15633 of the Welfare and Institutions Code is amended to read:

15633. (a) The reports made pursuant to Sections 15630 and 15631 shall be confidential and may be disclosed only as provided in subdivision (b). Any violation of the confidentiality required by this chapter is a misdemeanor punishable by not more than six months in the county jail, by a fine of five hundred dollars ($500), or by both that fine and imprisonment.

(b) Reports of suspected elder or dependent adult abuse and information contained therein may be disclosed only to the following:

(1) Persons or agencies to whom disclosure of information or the identity of the reporting party is permitted under Section 15633.5.

(2) (A) Persons who are trained and qualified to serve on multidisciplinary personnel teams may disclose to one another information and records that are relevant to the prevention, identification, or treatment of abuse of elderly or dependent persons.

(B) Except as provided in subparagraph (A), any personnel of the multidisciplinary team or agency that receives information pursuant to this chapter, shall be under the same obligations and subject to the same confidentiality penalties as the person disclosing or providing that information. The information obtained shall be maintained in a manner that ensures the maximum protection of privacy and confidentiality rights.

(c) This section shall not be construed to allow disclosure of any reports or records relevant to the reports of elder or dependent adult abuse if the disclosure would be prohibited by any other provisions of state or federal law applicable to the reports or records relevant to the reports of the abuse.

SEC. 3. Section 15653.5 is added to the Welfare and Institutions Code, to read:

15653.5. Training for determining when to refer a report of a known or suspected instance of abuse that occurred in a long-term care facility for potential criminal action shall be included in the training provided by the Bureau of Medi-Cal Fraud pursuant to subdivision (h) of Section 12528 of the Government Code.

SEC. 4. 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.

CHAPTER 981

An act to add Section 3032 to the Family Code, relating to interpreters.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. It is the intent of the Legislature to ensure that any person who lacks proficiency in English and who is a party in a child custody case have a qualified interpreter present during child custody proceedings and mediation.

It is not the intent of the Legislature by enacting this act to prohibit a person who lacks proficiency in English from having a family member or friend present during any proceeding where a qualified interpreter is translating the proceedings.

SEC. 2. Section 3032 is added to the Family Code, to read:

3032. (a) The Judicial Council shall establish a state-funded one-year pilot project beginning July 1, 1999, in at least two counties, including Los Angeles County, pursuant to which, in any child custody proceeding, including mediation proceedings pursuant to Section 3170, any action or proceeding under Division 10 (commencing with Section 6200), any action or proceeding under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), and any proceeding for dissolution or nullity of marriage or legal separation of the parties in which a protective order as been granted or is being sought pursuant to Section 6221, the court shall, notwithstanding Section 68092 of the Government Code, appoint an interpreter to interpret the proceedings at court expense, if both of the following conditions are met:

(1) One or both of the parties is unable to participate fully in the proceeding due to a lack of proficiency in the English language.

(2) The party who needs an interpreter appears in forma pauperis, pursuant to Section 68511.3 of the Government Code, or the court otherwise determines that the parties are financially unable to pay the cost of an interpreter. In all other cases where an interpreter is required pursuant to this section, interpreter fees shall be paid as provided in Section 68092 of the Government Code.

(3) This section shall not prohibit the court doing any of the following when an interpreter is not present:

(A) Issuing an order when the necessity for the order outweighs the necessity for an interpreter.

(B) Extending the duration of a previously issued temporary order if an interpreter is not readily available.

(C) Issuing a permanent order where a party who requires an interpreter fails to make appropriate arrangements for an interpreter after receiving proper notice of the hearing, including notice of the requirement to have an interpreter present, along with information about obtaining an interpreter.

(b) The Judicial Council shall submit its findings and recommendations with respect to the pilot project to the Legislature by January 31, 2001. Measurable objectives of the program may include increased utilization of the court by parties not fluent in English, increased efficiency in proceedings, increased compliance

with orders, enhanced coordination between courts and culturally relevant services in the community, increased client satisfaction, and increased public satisfaction.

SEC. 3. Funding for the implementation of this act shall be pursuant to an appropriation of funds for these purposes in the Budget Act of 1998.

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 982

An act to amend Section 1250.8 of the Health and Safety Code, and to add Section 14105.986 to the Welfare and Institutions Code, relating to hospitals.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1250.8 of the Health and Safety Code is amended to read:

1250.8. (a) Notwithstanding subdivision (a) of Section 437.10, the state department, upon application of a general acute care hospital which meets all the criteria of subdivision (b), and other applicable requirements of licensure, shall issue a single consolidated license to a general acute care hospital which includes more than one physical plant maintained and operated on separate premises or which has multiple licenses for a single health facility on the same premises. A single consolidated license shall not be issued where the separate freestanding physical plant is a skilled nursing facility or an intermediate care facility, whether or not the location of the skilled nursing facility or intermediate care facility is contiguous to the general acute care hospital unless the hospital is exempt from the requirements of subdivision (b) of Section 1254, or the facility is part of the physical structure licensed to provide acute care.

(b) The issuance of a single consolidated license shall be based on the following criteria:

(1) There is a single governing body for all of the facilities maintained and operated by the licensee.

(2) There is a single administration for all of the facilities maintained and operated by the licensee.

(3) There is a single medical staff for all of the facilities maintained and operated by the licensee, with a single set of bylaws, rules, and regulations, which prescribe a single committee structure.

(4) Except as provided otherwise in this paragraph, the physical plants maintained and operated by the licensee which are to be covered by the single consolidated license are located not more than 15 miles apart. If an applicant provides evidence satisfactory to the department that it can comply with all requirements of licensure and provide quality care and adequate administrative and professional supervision, the director may issue a single consolidated license to a general acute care hospital that operates two or more physical plants located more than 15 miles apart under any of the following circumstances:

(A) One or more of the physical plants is located in a rural area, as defined by regulations of the director.

(B) One or more of the physical plants provides only outpatient services, as defined by the department.

(C) If Section 14105.986 of the Welfare and Institutions Code is implemented and the applicant meets all of the following criteria:

(i) The applicant is a nonprofit corporation.

(ii) The applicant is a children's hospital listed in Section 10727 of the Welfare and Institutions Code.

(iii) The applicant is affiliated with a major university medical school, and located adjacent thereto.

(iv) The applicant operates a regional tertiary care facility.

(v) One of the physical plants is located in a county that has a consolidated and county government structure.

(vi) One of the physical plants is located in a county having a population between 1 million and 2 million.

(vii) The applicant is located in a city with a population between 50,000 and 100,000.

(c) In issuing the single consolidated license, the state department shall specify the location of each supplemental service and the location of the number and category of beds provided by the licensee. The single consolidated license shall be renewed annually.

(d) To the extent required by Part 1.5 (commencing with Section 437) of Division 1, a general acute care hospital which has been issued a single consolidated license:

(1) Shall not transfer from one facility to another a special service described in Section 1255 without first obtaining a certificate of need.

(2) Shall not transfer, in whole or in part, from one facility to another, a supplemental service, as defined in regulations of the

director pursuant to this chapter, without first obtaining a certificate of need, unless the licensee, 30 days prior to the relocation, notifies the Office of Statewide Health Planning and Development, the applicable health systems agency, and the state department of the licensee's intent to relocate the supplemental service, and includes with this notice a cost estimate, certified by a person qualified by experience or training to render the estimates, which estimates that the cost of the transfer will not exceed the capital expenditure threshold established by the Office of Statewide Health Planning and Development pursuant to Section 437.10.

(3) Shall not transfer beds from one facility to another facility, without first obtaining a certificate of need unless, 30 days prior to the relocation, the licensee notifies the Office of Statewide Health Planning and Development, the applicable health systems agency, and the state department of the licensee's intent to relocate health facility beds, and includes with this notice both of the following:

(A) A cost estimate, certified by a person qualified by experience or training to render the estimates, which estimates that the cost of the relocation will not exceed the capital expenditure threshold established by the Office of Statewide Health Planning and Development pursuant to Section 437.10.

(B) The identification of the number, classification, and location of the health facility beds in the transferor facility and the proposed number, classification, and location of the health facility beds in the transferee facility.

Except as otherwise permitted in Part 1.5 (commencing with Section 437) of Division 1, or as authorized in an approved certificate of need pursuant to that part, health facility beds transferred pursuant to this section shall be used in the transferee facility in the same bed classification as defined in Section 1250.1, as the beds were classified in the transferor facility.

Health facility beds transferred pursuant to this section shall not be transferred back to the transferor facility for two years from the date of the transfer, regardless of cost, without first obtaining a certificate of need pursuant to Part 1.5 (commencing with Section 437) of Division 1.

(e) All transfers pursuant to subdivision (d) shall satisfy all applicable requirements of licensure and shall be subject to the written approval, if required, of the state department. The state department may adopt regulations which are necessary to implement the provisions of this section. These regulations may include a requirement that each facility of a health facility subject to a single consolidated license have an onsite full-time or part-time administrator.

(f) As used in this section, "facility" means any physical plant operated or maintained by a health facility subject to a single, consolidated license issued pursuant to this section.

(g) For purposes of selective provider contracts negotiated under the Medi-Cal program, the treatment of a health facility with a single consolidated license issued pursuant to this section shall be subject to negotiation between the health facility and the California Medical Assistance Commission. A general acute care hospital which is issued a single consolidated license pursuant to this section may, at its option, receive from the state department a single Medi-Cal program provider number or separate Medi-Cal program provider numbers for one or more of the facilities subject to the single consolidated license. Irrespective of whether the general acute care hospital is issued one or more Medi-Cal provider numbers, the state department may require the hospital to file separate cost reports for each facility pursuant to Section 14170 of the Welfare and Institutions Code.

(h) For purposes of the Annual Report of Hospitals required by regulations adopted by the state department pursuant to this part, the state department and the Office of Statewide Health Planning and Development may require reporting of bed and service utilization data separately by each facility of a general acute care hospital issued a single consolidated license pursuant to this section.

(i) The amendments made to this section during the 1985–86 Regular Session of the California Legislature pertaining to the issuance of a single consolidated license to a general acute care hospital in the case where the separate physical plant is a skilled nursing facility or intermediate care facility shall not apply to the following facilities:

(1) Any facility which obtained a certificate of need after August 1, 1984, and prior to February 14, 1985, as described in this subdivision. The certificate of need shall be for the construction of a skilled nursing facility or intermediate care facility which is the same facility for which the hospital applies for a single consolidated license, pursuant to subdivision (a).

(2) Any facility for which a single consolidated license has been issued pursuant to subdivision (a), as described in this subdivision, prior to the effective date of the amendments made to this section during the 1985–86 Regular Session of the California Legislature.

Any facility which has been issued a single consolidated license pursuant to subdivision (a), as described in this subdivision, shall be granted renewal licenses based upon the same criteria used for the initial consolidated license.

(j) If the state department issues a single consolidated license pursuant to this section, the state department may take any action authorized by this chapter, including, but not limited to, any action specified in Article 5 (commencing with Section 1294), with respect to any facility, or any service provided in any facility, which is included in the consolidated license.

(k) The eligibility for participation in the Medi-Cal program (Chapter 7 (commencing with Section 14000), Part 3, Division 9,

Welfare and Institutions Code) of any facility that is included in a consolidated license issued pursuant to this section, provides outpatient services, and is located more than 15 miles from the health facility issued the consolidated license shall be subject to a determination of eligibility by the state department. This subdivision shall not apply to any facility that is located in a rural area and is included in a consolidated license issued pursuant to subparagraphs (A), (B), and (C) of paragraph (4) of subdivision (b). Regardless of whether a facility has received or not received a determination of eligibility pursuant to this subdivision, this subdivision shall not affect the ability of a licensed professional, providing services covered by the Medi-Cal program to a person eligible for Medi-Cal in a facility subject to a determination of eligibility pursuant to this subdivision, to bill the Medi-Cal program for those services provided in accordance with applicable regulations.

(*l*) Notwithstanding any other provision of law, the director may issue a single consolidated license for a general acute care hospital to Children's Hospital Oakland and San Ramon Regional Medical Center.

SEC. 1.5. Section 1250.8 of the Health and Safety Code is amended to read:

1250.8. (a) Notwithstanding subdivision (a) of Section 437.10, the state department, upon application of a general acute care hospital or an acute psychiatric hospital which meets all the criteria of subdivision (b), and other applicable requirements of licensure, shall issue a single consolidated license to a general acute care hospital or an acute psychiatric hospital which includes more than one physical plant maintained and operated on separate premises or which has multiple licenses for a single health facility on the same premises. A single consolidated license shall not be issued where the separate freestanding physical plant is a skilled nursing facility or an intermediate care facility, whether or not the location of the skilled nursing facility or intermediate care facility is contiguous to the general acute care hospital or an acute psychiatric hospital unless the hospital is exempt from the requirements of subdivision (b) of Section 1254, or the facility is part of the physical structure licensed to provide acute care.

(b) The issuance of a single consolidated license shall be based on the following criteria:

(1) There is a single governing body for all of the facilities maintained and operated by the licensee.

(2) There is a single administration for all of the facilities maintained and operated by the licensee.

(3) There is a single medical staff for all of the facilities maintained and operated by the licensee, with a single set of bylaws, rules, and regulations, which prescribe a single committee structure.

(4) Except as provided otherwise in this paragraph, the physical plants maintained and operated by the licensee which are to be

covered by the single consolidated license are located not more than 15 miles apart. If an applicant provides evidence satisfactory to the department that it can comply with all requirements of licensure and provide quality care and adequate administrative and professional supervision, the director may issue a single consolidated license to a general acute care hospital or an acute psychiatric hospital that operates two or more physical plants located more than 15 miles apart under any of the following circumstances:

(A) One or more of the physical plants is located in a rural area, as defined by regulations of the director.

(B) One or more of the physical plants provides only outpatient services, as defined by the department.

(C) The applicant meets all of the following criteria:

(i) The applicant is a nonprofit corporation.

(ii) The applicant is a children's hospital listed in Section 10727 of the Welfare and Institutions Code.

(iii) The applicant is affiliated with a major university medical school, and located adjacent thereto.

(iv) The applicant operates a regional tertiary care facility.

(v) One of the physical plants is located in a county that has a consolidated and county government structure.

(vi) One of the physical plants is located in a county having a population between 1 million and 2 million.

(vii) The applicant is located in a city with a population between 50,000 and 100,000.

(c) In issuing the single consolidated license, the state department shall specify the location of each supplemental service and the location of the number and category of beds provided by the licensee. The single consolidated license shall be renewed annually.

(d) To the extent required by Part 1.5 (commencing with Section 437) of Division 1, a general acute care hospital or an acute psychiatric hospital which has been issued a single consolidated license:

(1) Shall not transfer from one facility to another a special service described in Section 1255 without first obtaining a certificate of need.

(2) Shall not transfer, in whole or in part, from one facility to another, a supplemental service, as defined in regulations of the director pursuant to this chapter, without first obtaining a certificate of need, unless the licensee, 30 days prior to the relocation, notifies the Office of Statewide Health Planning and Development, the applicable health systems agency, and the state department of the licensee's intent to relocate the supplemental service, and includes with this notice a cost estimate, certified by a person qualified by experience or training to render the estimates, which estimates that the cost of the transfer will not exceed the capital expenditure threshold established by the Office of Statewide Health Planning and Development pursuant to Section 437.10.

(3) Shall not transfer beds from one facility to another facility, without first obtaining a certificate of need unless, 30 days prior to the relocation, the licensee notifies the Office of Statewide Health Planning and Development, the applicable health systems agency, and the state department of the licensee's intent to relocate health facility beds, and includes with this notice both of the following:

(A) A cost estimate, certified by a person qualified by experience or training to render the estimates, which estimates that the cost of the relocation will not exceed the capital expenditure threshold established by the Office of Statewide Health Planning and Development pursuant to Section 437.10.

(B) The identification of the number, classification, and location of the health facility beds in the transferor facility and the proposed number, classification, and location of the health facility beds in the transferee facility.

Except as otherwise permitted in Part 1.5 (commencing with Section 437) of Division 1, or as authorized in an approved certificate of need pursuant to that part, health facility beds transferred pursuant to this section shall be used in the transferee facility in the same bed classification as defined in Section 1250.1, as the beds were classified in the transferor facility.

Health facility beds transferred pursuant to this section shall not be transferred back to the transferor facility for two years from the date of the transfer, regardless of cost, without first obtaining a certificate of need pursuant to Part 1.5 (commencing with Section 437) of Division 1.

(e) All transfers pursuant to subdivision (d) shall satisfy all applicable requirements of licensure and shall be subject to the written approval, if required, of the state department. The state department may adopt regulations which are necessary to implement the provisions of this section. These regulations may include a requirement that each facility of a health facility subject to a single consolidated license have an onsite full-time or part-time administrator.

(f) As used in this section, "facility" means any physical plant operated or maintained by a health facility subject to a single, consolidated license issued pursuant to this section.

(g) For purposes of selective provider contracts negotiated under the Medi-Cal program, the treatment of a health facility with a single consolidated license issued pursuant to this section shall be subject to negotiation between the health facility and the California Medical Assistance Commission. A general acute care hospital or an acute psychiatric hospital which is issued a single consolidated license pursuant to this section may, at its option, receive from the state department a single Medi-Cal program provider number or separate Medi-Cal program provider numbers for one or more of the facilities subject to the single consolidated license. Irrespective of whether the general acute care hospital or an acute psychiatric hospital is issued

one or more Medi-Cal provider numbers, the state department may require the hospital to file separate cost reports for each facility pursuant to Section 14170 of the Welfare and Institutions Code.

(h) For purposes of the Annual Report of Hospitals required by regulations adopted by the state department pursuant to this part, the state department and the Office of Statewide Health Planning and Development may require reporting of bed and service utilization data separately by each facility of a general acute care hospital issued a single consolidated license pursuant to this section.

(i) The amendments made to this section during the 1985–86 Regular Session of the California Legislature pertaining to the issuance of a single consolidated license to a general acute care hospital in the case where the separate physical plant is a skilled nursing facility or intermediate care facility shall not apply to the following facilities:

(1) Any facility which obtained a certificate of need after August 1, 1984, and prior to February 14, 1985, as described in this subdivision. The certificate of need shall be for the construction of a skilled nursing facility or intermediate care facility which is the same facility for which the hospital applies for a single consolidated license, pursuant to subdivision (a).

(2) Any facility for which a single consolidated license has been issued pursuant to subdivision (a), as described in this subdivision, prior to the effective date of the amendments made to this section during the 1985–86 Regular Session of the California Legislature.

Any facility which has been issued a single consolidated license pursuant to subdivision (a), as described in this subdivision, shall be granted renewal licenses based upon the same criteria used for the initial consolidated license.

(j) If the state department issues a single consolidated license pursuant to this section, the state department may take any action authorized by this chapter, including, but not limited to, any action specified in Article 5 (commencing with Section 1294), with respect to any facility, or any service provided in any facility, which is included in the consolidated license.

(k) The eligibility for participation in the Medi-Cal program (Chapter 7 (commencing with Section 14000), Part 3, Division 9, Welfare and Institutions Code) of any facility that is included in a consolidated license issued pursuant to this section, provides outpatient services, and is located more than 15 miles from the health facility issued the consolidated license shall be subject to a determination of eligibility by the state department. This subdivision shall not apply to any facility that is located in a rural area and is included in a consolidated license issued pursuant to subparagraphs (A), (B), and (C) of paragraph (4) of subdivision (b). Regardless of whether a facility has received or not received a determination of eligibility pursuant to this subdivision, this subdivision shall not affect the ability of a licensed professional, providing services covered by

the Medi-Cal program to a person eligible for Medi-Cal in a facility subject to a determination of eligibility pursuant to this subdivision, to bill the Medi-Cal program for those services provided in accordance with applicable regulations.

(*l*) Notwithstanding any other provision of law, the director may issue a single consolidated license for a general acute care hospital or an acute psychiatric hospital to Children's Hospital Oakland and San Ramon Regional Medical Center.

SEC. 2. Section 14105.986 is added to the Welfare and Institutions Code, to read:

14105.986. (a) Any children's hospital as defined in Section 10727 that holds a consolidated license issued pursuant to subparagraph (C) of paragraph (4) of subdivision (b) of Section 1250.8 of the Health and Safety Code may be evaluated for eligibility for payments under subdivision (c) of Section 14105.98 no earlier than January 1, 2000, using data related to all physical plants appearing on the consolidated license. For purposes of calculating the appropriate amount of the payment adjustment under subdivision (l) of Section 14105.98 for these children's hospitals, the department shall use data relating only to the children's hospital or any other physical plant appearing on the consolidated license which is not more than 15 miles from the children's hospital and shall exclude data relating to any physical plant added to the consolidated license pursuant to subparagraph (C) of paragraph (4) of subdivision (b) of Section 1250.8 of the Health and Safety Code.

(b) The department shall not implement this section unless all of the following occur:

(1) Federal financial participation is available.

(2) The federal Health Care Financing Administration approves a state plan amendment to implement this section.

(3) All data necessary to complete the evaluations and calculations required by subdivision (a) are provided to the department from the same sources described in Section 14105.98 and in the approved state plan existing on July 1, 1998. In no event shall data directly provided by a children's hospital be utilized for these evaluations and calculations.

SEC. 3. Section 1.5 of this bill incorporates amendments to Section 1250.8 of the Health and Safety Code proposed by both this bill and SB 1541. 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 1250.8 of the Health and Safety Code, and (3) this bill is enacted after SB 1541, in which case Section 1 of this bill shall not become operative.

CHAPTER 983

An act to add Chapter 2.5 (commencing with Section 8730) to Part 2 of Division 13 of, the Family Code, relating to adoptions.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. It is the intent of the Legislature to do both of the following:

(a) Secure permanent homes for children in the foster care system and minimize the disruption in their lives by reducing barriers to the adoption of foster children by their relative caregivers or by foster parents with whom they have lived for six months or longer.

(b) Ensure the safety of children in foster and adoptive homes and increase the ability of foster parents and relative caregivers to adopt children in their care.

SEC. 2. The Legislature finds and declares both of the following:

(a) That Sara Berman, Adoptions Division Chief for the Los Angeles County Department of Children and Family Services, was a true child advocate who believed that all children deserve every possible opportunity for a permanent family. Her vision for adoption services was expansive, creative, and dedicated to adoptive families for children who would otherwise be raised in foster care. In this capacity, she contributed to the development of an expedited adoption study for those prospective adoptive families who have provided foster care for the children they wish to adopt. She was also known by many for her leadership and commitment to the children of California through her efforts as President of the California Association of Adoption Agencies.

(b) This act shall be known as the Sara Berman Adoption Act of 1998.

SEC. 3. Chapter 2.5 (commencing with Section 8730) is added to Part 2 of Division 13 of the Family Code, to read:

CHAPTER 2.5. ADOPTIONS BY RELATIVE CAREGIVERS OR FOSTER PARENTS

8730. If the prospective adoptive parent of a child is a foster parent with whom the child has lived for a minimum of six months or a relative caregiver who has had an ongoing and significant relationship with the child, an assessment or home study of the prospective adoptive parent may, at the discretion of the department or a licensed adoption agency, or unless the court with jurisdiction over the child orders otherwise, require only the following:

(a) A criminal records check of the relative caregiver or foster parent, as provided in subdivision (a) of Section 8712.

(b) A determination that the relative caregiver or foster parent has sufficient financial stability to support the child and ensure that any adoption assistance program payment or other government assistance to which the child is entitled is used exclusively to meet the child's needs. In making this determination, the experience of the relative caregiver or foster parent only while the child was in his or her care shall be considered. For purposes of this section, the relative caregiver or foster parent shall be required to provide verification of employment records or income or both.

(c) A determination that the relative caregiver or foster parent has not abused or neglected the child while the child has been in his or her care and has fostered the healthy growth and development of the child. This determination shall include a review of the disciplinary practices of the relative caregiver or foster parent to ensure that the practices are age appropriate and do not physically or emotionally endanger the child.

(d) A determination that there is not a likelihood that the relative caregiver or foster parent will abuse or neglect the child in the future, that the caregiver or foster parent can protect the child, ensure necessary care and supervision, and foster the child's healthy growth and development.

(e) A determination that the relative caregiver or foster parent can address racial and cultural issues that may affect the child's well-being.

(f) An interview with the relative caregiver or foster parent, an interview with each individual residing in the home and an interview with the child to be adopted.

8731. If the prospective adoptive parent of a child is a foster parent, the assessment or home study described in Section 8730 shall not be initiated until the child to be adopted has resided in the home of the foster parent for at least six months.

8732. A report of a medical examination of the foster parent with whom the child has lived for a minimum of six months or the relative caregiver who has had an ongoing and significant relationship with the child shall be included in the assessment of each applicant unless the department or licensed adoption agency determines that, based on other available information, this report is unnecessary. The assessment shall require certification that the applicant and each adult residing in the applicant's home has received a test for communicable tuberculosis.

8733. The department or licensed adoption agency shall require the adoptive parent to be provided with information related to the specific needs of the child to be adopted, that, as determined by the licensed adoption agency, may include information regarding the following: issues surrounding birth parents, the effects of abuse and neglect on children, cultural and racial issues, sexuality, contingency

planning for children in the event of the parents' death or disability, financial assistance for adopted children, common childhood disabilities, including, but not limited to, emotional disturbances, attention deficit disorder, learning disabilities, speech and hearing impairment, and dyslexia, the importance of sibling and half-sibling relationships, and other issues related to adoption and child development and the availability of counseling to deal with these issues.

8734. The department shall encourage adoption agencies to make adoption training programs available to prospective adoptive families.

8735. The department shall require adoption agencies to inform the agency responsible for the foster care placement when a relative caregiver or foster parent has been denied approval to adopt based on an inability of the relative caregiver or foster parent to provide for the mental and emotional health, safety, and security of the child and to recommend either that the relative caregiver or foster parent be provided with additional support and supervision or that the child be removed from the home of the relative caregiver or foster parent.

8736. The requirements of this chapter shall not be used as basis for removing a child who has been placed with a relative caregiver or foster parent prior to January 1, 1999, unless the noncompliance with the standards described therein present a danger to the health, safety, or emotional well-being of the child.

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 984

An act to amend Sections 725, 1367.215 and 2024 of the Business and Professions Code, and to add Section 1367.215 to, the Health and Safety Code, relating to health care.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 725 of the Business and Professions Code is amended to read:

725. Repeated acts of clearly excessive prescribing or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist. However, pursuant to Section 2241.5, no physician and surgeon in compliance with the California Intractable Pain Treatment Act shall be subject to disciplinary action for lawfully prescribing or administering controlled substances in the course of treatment of a person for intractable pain.

Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both the fine and imprisonment.

SEC. 2. Section 2024 of the Business and Professions Code is amended to read:

2024. (a) The board may select and contract with necessary medical consultants who are licensed physicians and surgeons to assist it in its programs. Subject to Section 19130 of the Government Code, the board may contract with these consultants on a sole source basis.

(b) Every consultant retained under this section for a given investigation of a licensee shall be a specialist, as defined in subparagraph (B) of paragraph (5) of subdivision (h) of Section 651.

SEC. 3. Section 1367.215 is added to the Health and Safety Code, immediately following Section 1367.21, to read:

1367.215. (a) Every health care service plan contract that covers prescription drug benefits shall provide coverage for appropriately prescribed pain management medications for terminally ill patients when medically necessary. The plan shall approve or deny the request by the provider for authorization of coverage for an enrollee who has been determined to be terminally ill in a timely fashion, appropriate for the nature of the enrollee's condition, not to exceed 72 hours of the plan's receipt of the information requested by the plan to make the decision. If the request is denied or if additional information is required, the plan shall contact the provider within one working day of the determination, with an explanation of the reason for the denial or the need for additional information. The requested treatment shall be deemed authorized as of the expiration of the applicable timeframe. The provider shall contact the plan

within one business day of proceeding with the deemed authorized treatment, to do all of the following:

(1) Confirm that the timeframe has expired.

(2) Provide enrollee identification.

(3) Notify the plan of the provider or providers performing the treatment.

(4) Notify the plan of the facility or location where the treatment was rendered.

(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.

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 985

An act to add Section 301.7 to the Corporations Code, relating to corporations.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 301.7 is added to the Corporations Code, to read:

301.7. (a) A listed corporation engaged in business limited to the operation and maintenance of a recreation venture having golf and tennis facilities and ancillary dining and beverage services may, by amendment of its articles or bylaws, adopt provisions allowing division of its board of directors into two classes, with one-half of the directors or as close an approximation as possible to be elected at each annual meeting of shareholders, provided that the corporation's bylaws or articles limit each holder of the securities to no more than five shares and require some of those holders to occupy dwellings

immediately contiguous to the real property of the corporation. An article or bylaw amendment providing for division of the board of directors into classes may only be adopted by the approval of the board and the outstanding shares (Section 152) voting as a single class, notwithstanding Section 903. Directors of a listed corporation that meet these conditions may be elected by classes at a meeting of shareholders at which an amendment to the articles or bylaws described in this paragraph is approved, but the extended terms for directors are contingent on that approval, and in the case of an amendment to the articles, the filing of any necessary amendment to the articles pursuant to Section 905 or 910.

(b) For purposes of this section, a "listed corporation" means a corporation described in paragraph (1) or (2) of subdivision (d) of Section 301.5, except that a corporation described in paragraph (2) of subdivision (d) of that section shall be required to only have at least 600 holders of its equity securities as of the record date of the corporation's most recent annual meeting of shareholders as long as it meets all other requirements of that paragraph.

(c) If an article amendment referred to in subdivision (a) is adopted by a listed corporation, the certificate of amendment shall include a statement of the facts showing that the corporation is a listed corporation within the meaning of subdivision (b).

CHAPTER 986

An act to add Section 3260.2 to the Civil Code, relating to works of improvement.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 3260.2 is added to the Civil Code, to read:

3260.2. (a) If an original contractor is not paid all moneys which are owed pursuant to a written contract for a private work of improvement within 35 days from the date payment is due pursuant to the written contract, and there is no dispute as to the satisfactory performance of that original contractor, the original contractor shall have a right to serve upon the owner a "10-day stop work order" that states that unless all amounts then due the original contractor are paid within 10 days from the date notice is provided under this section, the original contractor will stop work on the project. At least five days before service upon the owner of a "10-day stop work order," the contractor shall post, in a conspicuous location at the job site and at the main office, if one exists, of the job site, a notice that the original contractor intends to file a 10-day stop work order

pursuant to this section. A copy of the written notice shall also be served upon all subcontractors with whom the original contractor has a direct contractual relationship on the project at the same time the notice is served upon the owner. Within five days of receipt of written notice by an original contractor pursuant to this section, the owner shall forward to the construction lender, if any, at the address provided in the construction loan agreement, a copy of the notice by first-class mail.

Upon resolution of the dispute or cancellation of the 10-day notice by the original contractor, the original contractor shall post, in a conspicuous location at the job site and at the main office, and serve a notice to inform the subcontractors with whom the original contractor has a direct contractual relationship of this resolution or cancellation.

(b) The original contractor's right to stop work pursuant to this section is in addition to any and all other rights the original contractor may have under the law.

(c) Notwithstanding any other provision, the original contractor or his or her surety, or subcontractor or his or her surety, shall not be liable for any delays or damages that the owner or contractor of a subcontractor may suffer as a result of the original contractor serving the owner with a 10-day stop work order, and subsequently stopping work for nonpayment if all of the posting and notice requirements described in subdivision (a) are met. An original contractor's or original subcontractor's liability to a subcontractor or material supplier resulting from the cessation of work under this section shall be limited to the amount of monetary damages the subcontractor or material supplier could recover under the mechanic's lien law for goods and services provided up to the date the subcontractor ceases work, provided that (1) liability shall continue for work performed and materials supplied up to and including the 10-day notice period and not beyond, and (2) this provision does not apply to limit monetary damages for custom work, including materials which have been fabricated, manufactured, or ordered to specifications that are unique to the job.

(d) If the payment is not made within 10 days from the date the notice was served, the original contractor or his or her surety, may seek a judicial determination of liability for the amount not paid for work performed in an expedited proceeding in the superior court in the county in which the private work improvement is located.

(e) It shall be against public policy to waive the provisions of this section in any written contract for private work of improvement.

(f) This section shall apply to any contract entered into on or after January 1, 1999. However, nothing in this section shall be construed to apply to retentions withheld by a lender in accordance with the construction loan agreement.

(g) The stop work order specified in this section for private works of improvement may be served as follows:

(1) If the person to be notified resides in this state, by delivering the stop work order personally, or by leaving it at his or her address of residence or place of business with some person in charge, or by first-class registered or certified mail, postage prepaid, addressed to the person to whom notice is to be given at his or her residence or place of business address or at the address shown by the building permit on file with the authority issuing a building permit for the work, or at an address recorded pursuant to subdivision (j) of Section 3097.

(2) If the person to be notified of the stop work order does not reside in this state, by any method enumerated in paragraph (1) of this subdivision. If the person cannot be served by any of these methods, then notice may be given by first-class certified or registered mail, addressed to the construction lender.

(3) Service pursuant to this paragraph by certified mail is effective upon receipt. Service by registered mail is effective five days after mailing.

CHAPTER 987

An act to add Section 40059.1 to the Public Resources Code, relating to solid waste.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 40059.1 is added to the Public Resources Code, to read:

40059.1. (a) The Legislature hereby finds and declares both of the following:

(1) In 1989, the Legislature enacted this division as the California Integrated Waste Management Act of 1989. One of the key provisions of this division is that each local agency has the responsibility for diverting 50 percent of all solid waste generated within the local agency by January 1, 2000.

(2) The public policy objective of the Legislature in enacting this section is to ensure that those local agencies that require an indemnity obligation retain their responsibility for implementing the diversion requirements of this division.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Indemnity obligation" means any indemnity obligation directly or indirectly related to the failure of a local agency to meet the solid waste diversion requirements imposed by Chapter 6 (commencing with Section 41780) of Part 2, that is expressly assumed

by, or imposed upon, the solid waste enterprise, whether pursuant to ordinance, contract, franchise, license, permit, or other entitlement or right, for the benefit of the local agency.

(2) "Local agency" means any county, city, city and county, district, regional agency as defined in Section 40181, or other local government agency.

(c) Any provision, term, condition, or requirement contained in any ordinance, contract, franchise, license, permit, or other entitlement or right adopted, entered into, issued, or granted, as the case may be, by a local agency for solid waste collection and handling, including the recycling, processing, or composting of solid waste, or in any request for bids or proposals in connection with any such contract or franchise, that authorizes or requires the imposition of an indemnity obligation, shall, notwithstanding any such provision, term, condition, or requirement, be subject to all of the following restrictions:

(1) An indemnity obligation shall not be enforceable if the board imposed penalty is based solely upon the failure of the local agency to establish and maintain a source reduction and recycling element pursuant to Chapter 2 (commencing with Section 41000) of Part 2, Chapter 3 (commencing with Section 41300) of Part 2, or Section 41750.1, as the case may be.

(2) Any board imposed penalty based upon a local agency's failure to meet the solid waste diversion requirements imposed by Chapter 6 (commencing with Section 41780) of Part 2, resulting in whole or in part from the solid waste enterprise's breach of contract or noncompliance with any other authorization, shall be apportioned in accordance with the percentage of fault of the local agency and the solid waste enterprise.

(3) For purposes of this section, a solid waste enterprise is not liable for the indemnity obligation to the extent that the solid waste enterprise's breach or noncompliance resulted from the action or failure to act of the local agency.

(4) No payment required or imposed pursuant to an indemnity obligation, whether required or imposed by ordinance, contract, franchise, license, permit, or other entitlement or right, may exceed that portion of any penalty assessed by the board against the local agency that was caused by the solid waste enterprise's breach or noncompliance of an express obligation or requirement.

(5) No indemnity obligation shall be enforceable against a solid waste enterprise until the local agency has affirmatively sought, in good faith, all administrative relief available pursuant to Chapter 6 (commencing with Section 41780) and Chapter 7 (commencing with Section 41800) of Part 2, unless the local agency demonstrates good cause, based on substantial evidence in the record, for not pursuing that administrative relief. The solid waste enterprise shall cooperate, in good faith, with the local agency seeking that administrative relief

and shall provide in writing to the local agency all known defenses to the imposition of penalties.

(d) Nothing in this section shall be construed to preclude either party from seeking any other remedy under law or equity.

(e) The provisions of this section are not subject to waiver, and any attempted waiver shall be null and void as against public policy.

(f) This section is not intended to do any of the following:

(1) Add to or expand the authority of local agencies to determine aspects of solid waste collection and handling pursuant to Section 40059.

(2) Alter the authority of business entities to collect or process materials that are not solid waste.

(3) Affect any contract right existing on the effective date of this section.

CHAPTER 988

An act to amend Sections 1786.2, 1786.10, 1786.12, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.30, 1786.40, and 1786.50 of, and to add Section 1786.11 to, the Civil Code, relating to investigative consumer reporting.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1786.2 of the Civil Code is amended to read:

1786.2. The following terms as used in this title have the meaning expressed in this section:

(a) The term "person" means any individual, partnership, corporation, limited liability company, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. The term "person" as used in this title shall not be construed to require duplicative reporting by any individual, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity involved in the same transaction.

(b) The term "consumer" means a natural individual who has made application to a person for employment purposes, for insurance for personal, family, or household purposes, or the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940.

(c) The term "investigative consumer report" means a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means. The term does not include a consumer report or other compilation of information that is limited to specific factual

information relating to a consumer's credit record or manner of obtaining credit obtained directly from a creditor of the consumer or from a consumer reporting agency when that information was obtained directly from a potential or existing creditor of the consumer or from the consumer. Notwithstanding the foregoing, for transactions between investigative consumer reporting agencies and insurance institutions, agents, or insurance-support organizations subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, the term "investigative consumer report" shall have the meaning set forth in subdivision (n) of Section 791.02 of the Insurance Code.

(d) The term "investigative consumer reporting agency" means any person who, for monetary fees or dues, regularly engages in whole or in part in the practice of assembling or evaluating information concerning consumers for the purposes of furnishing investigative consumer reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes, or any licensed insurance agent, insurance broker, or solicitor, insurer, or life insurance agent.

(e) The term "file," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by an investigative consumer reporting agency regardless of how the information is stored.

(f) The term "employment purposes," when used in connection with an investigative consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(g) The term "medical information" means information on a person's medical history or condition obtained directly or indirectly from a licensed physician, medical practitioner, hospital, clinic, or other medical or medically related facility.

SEC. 2. Section 1786.10 of the Civil Code is amended to read:

1786.10. (a) Every investigative consumer reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding the consumer at the time of the request.

(b) All items of information shall be available for inspection, except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed. However, if an action is brought under this title, those sources shall be available to the consumer under appropriate discovery procedures in the court in which the action is brought.

Nothing in this title shall be interpreted to mean that investigative consumer reporting agencies are required to divulge to consumers the sources of investigative consumer reports except in appropriate discovery procedures as outlined herein.

(c) The investigative consumer reporting agency shall also identify the recipients of any investigative consumer report on the consumer that the investigative consumer reporting agency has furnished:

(1) For employment or insurance purposes within the two-year period preceding the request.

(2) For any other purpose within the one-year period preceding the request.

(d) The identification of a recipient under subdivision (c) shall include the name of the recipient or, if applicable, the trade name (written in full) under which the recipient conducts business and, upon request of the consumer, the address and telephone number of the recipient.

(e) The investigative consumer reporting agency shall also disclose the dates, original payees, and amounts of any checks or charges upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

SEC. 3. Section 1786.11 is added to the Civil Code, to read:

1786.11. Every investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer shall make a copy of that report available, upon request and proper identification, to the consumer for at least 60 days after the date that the report is provided to the other person.

SEC. 4. Section 1786.12 of the Civil Code is amended to read:

1786.12. An investigative consumer reporting agency shall only furnish an investigative consumer report under the following circumstances:

(a) In response to the order of a court having jurisdiction to issue the order.

(b) In compliance with a lawful subpoena issued by a court of competent jurisdiction.

(c) In accordance with the written instructions of the consumer to whom it relates.

(d) To a person that it has reason to believe:

(1) Intends to use the information for employment purposes; or

(2) Intends to use the information serving as a factor in determining a consumer's eligibility for insurance or the rate for any insurance; or

(3) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider the applicant's financial responsibility or status; or

(4) Intends to use the information in connection with an order of a court of competent jurisdiction to provide support where the imposition or enforcement of the order involves the consumer; or

(5) Intends to use the information in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940.

(e) An investigative consumer reporting agency shall not prepare or furnish an investigative consumer report to a person described in subdivision (d) unless the agency has received the certification under paragraph (4) of subdivision (a) of Section 1786.16 from the person requesting the report.

(f) An investigative consumer reporting agency shall not furnish an investigative consumer report to a person described in subdivision (d) if that report contains medical information about a consumer, unless the consumer consents to the furnishing of the report.

SEC. 5. Section 1786.16 of the Civil Code is amended to read:

1786.16. (a) Any person described in subdivision (d) of Section 1786.12 shall not procure or cause to be prepared an investigative consumer report unless the following applicable conditions are met:

(1) If an investigative consumer report is sought in connection with the underwriting of insurance, it shall be clearly and accurately disclosed in writing at the time the application form, medical form, binder, or similar document is signed by the consumer that an investigative consumer report regarding the consumer's character, general reputation, personal characteristics, and mode of living may be made. If no signed application form, medical form, binder, or similar document is involved in the underwriting transaction, the disclosure shall be made to the consumer in writing and mailed or otherwise delivered to the consumer not later than three days after the report was first requested.

(2) If, at any time, an investigative consumer report is sought for employment purposes other than promotion or reassignment, the person procuring or causing the report to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report regarding the consumer's character, general reputation, personal characteristics, and mode of living will be made. This notification shall include the name of the investigative consumer reporting agency conducting the investigation and a summary of the provisions of Section 1786.22.

(3) If an investigative consumer report is sought in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, the person procuring or causing the request to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made regarding the consumer's character, general reputation, personal characteristics, and mode of living. The notification shall also include the name and address of the investigative consumer reporting agency that will prepare the report.

(4) The person procuring or causing the request to be made shall certify to the investigative consumer reporting agency that the person has made the applicable disclosures to the consumer required

by this subdivision and that the person will comply with subdivision (b).

(b) Any person described in subdivision (d) of Section 1786.12 shall, upon written request made by the consumer within a reasonable period of time after the receipt by the consumer of the disclosure required by subdivision (a), make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in writing and mailed or otherwise delivered to the consumer not later than five days after the date the request for the disclosure was received from the consumer or the report was first requested, whichever is later.

(c) The provisions of subdivision (a) shall not apply to an investigative consumer report procured or caused to be prepared by an employer if the purpose of the employer is to determine whether to retain an employee when there is a good faith belief that the employee is engaged in any criminal activity likely to result in a loss to the employer.

(d) Those persons described in subdivision (d) of Section 1786.12 of this title shall constitute the sole and exclusive class of persons who may cause an investigative consumer report to be prepared.

SEC. 6. Section 1786.18 of the Civil Code is amended to read:

1786.18. (a) Except as authorized under subdivision (b), no investigative consumer reporting agency shall make or furnish any investigative consumer report containing any of the following items of information:

(1) Bankruptcies that, from the date of adjudication, antedate the report by more than 10 years.

(2) Suits that, from the date of filing, and satisfied judgments that, from the date of entry, antedate the report by more than seven years.

(3) Unsatisfied judgments that, from the date of entry, antedate the report by more than seven years.

(4) Unlawful detainer actions where the defendant was the prevailing party or where the action is resolved by settlement agreement.

(5) Paid tax liens that, from the date of payment, antedate the report by more than seven years.

(6) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years.

(7) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that, in the case of a conviction, a full pardon has been granted or, in the case of an arrest, indictment, information, or misdemeanor complaint, a conviction did not result; except that records of arrest, indictment, information, or misdemeanor complaints may be reported pending pronouncement of judgment on the particular subject matter of those records.

(8) Any other adverse information that antedates the report by more than seven years.

(b) The provisions of subdivision (a) are not applicable in the case of any investigative consumer report to be used in the following transactions:

(1) The underwriting of life insurance involving, or that may reasonably be expected to involve, an amount of one hundred fifty thousand dollars ($150,000) or more.

(2) The employment of any individual at an annual salary that equals, or may reasonably be expected to equal, seventy-five thousand dollars ($75,000) or more.

(3) The rental of a dwelling unit that exceeds two thousand dollars ($2,000) per month.

(c) Except as otherwise provided in Section 1786.28, an investigative consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

(d) An investigative consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of the item of information, unless either (1) the investigative consumer reporting agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information, or (2) the person interviewed is the best possible source of the information.

SEC. 7. Section 1786.20 of the Civil Code is amended to read:

1786.20. (a) Every investigative consumer reporting agency shall maintain reasonable procedures designed to avoid violations of Section 1786.18 and to limit furnishing of investigative consumer reports for the purposes listed under Section 1786.12. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought and that the information will be used for no other purposes, and make the certifications described in paragraph (4) of subdivision (a) of Section 1786.16. From the effective date of this title, the investigative consumer reporting agency shall keep a record of the purposes for which information is sought, as stated by the user. Every investigative consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by the prospective user prior to furnishing the user any investigative consumer reports. No investigative consumer reporting agency may furnish any investigative consumer reports to any person

unless it has reasonable grounds for believing that the investigative consumer reports will be used by that person for purposes listed in Section 1786.12.

(b) Whenever an investigative consumer reporting agency prepares an investigative consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) An investigative consumer reporting agency shall not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable federal or state equal employment opportunity law or regulation.

SEC. 8. Section 1786.24 of the Civil Code is amended to read:

1786.24. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the investigative consumer reporting agency by the consumer, the investigative consumer reporting agency shall, without charge, reinvestigate and record the current status of the disputed information or delete the item from the file in accordance with subdivision (c), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

(b) The agency shall notify any person who provided information in dispute at the address and in the manner specified by that person. The notice shall include all relevant information regarding the dispute that the investigative consumer reporting agency has received from the consumer. The agency shall also promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer during the reinvestigation.

(c) In conducting a reinvestigation, the investigative consumer reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information.

(d) Notwithstanding subdivision (a), an investigative consumer reporting agency may terminate a reinvestigation of information disputed by a consumer if the investigative consumer reporting agency reasonably determines that the dispute is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information. Upon making a determination that a dispute is frivolous or irrelevant, the investigative consumer reporting agency shall notify the consumer, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency. In this notification, the investigative consumer reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant and provide a description of any information

required to investigate the disputed information, that may consist of a standardized form describing the general nature of the required information.

(e) If a reinvestigation is made and, after reinvestigation, the disputed item of information is found to be inaccurate, incomplete, or cannot be verified by the evidence submitted, the investigative consumer reporting agency shall promptly delete that information from the consumer's file or modify the information, as appropriate, based on the results of the reinvestigation, and shall notify the consumer that the information has been deleted or modified.

(f) No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information verifies that the information is complete and accurate. If any information deleted from a consumer's file is reinserted in the file, the investigative consumer reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the consumer for that purpose, by any other means available to the agency. As part of, or in addition to, this notice, the investigative consumer reporting agency shall provide to the consumer in writing (1) a statement that the disputed information has been reinserted, (2) the name, address, and telephone number of any furnisher of information contacted or that contacted the investigative consumer reporting agency in connection with the reinsertion, and the telephone number of the furnisher, if reasonably available, and (3) a notice that the consumer has the right to a reinvestigation of the information reinserted by the investigative consumer reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.

(g) An investigative consumer reporting agency shall provide notice to the consumer of the results of any reinvestigation under this section by mail or, if authorized by the consumer for that purpose, by other means available to the agency. The notice shall include (1) a statement that the reinvestigation is completed, (2) an investigative consumer report that is based on the consumer's file as that file is revised as a result of the reinvestigation, (3) a description or indication of any changes made in the investigative consumer report as a result of those revisions to the consumer's file, (4) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the investigative consumer reporting agency, including the name, business address, and telephone number of any furnisher of information contacted in connection with that information, (5) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information, and (6) a notice that the consumer has the right to request that the investigative consumer reporting agency furnish notifications under subdivision (k).

(h) The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(i) If the investigative consumer reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, or if the information is reinserted into the consumer's file pursuant to subdivision (f), the consumer may file a brief statement setting forth the nature of the dispute. The investigative consumer reporting agency may limit these statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(j) Whenever a statement of dispute is filed, the investigative consumer reporting agency shall, in any subsequent investigative consumer report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.

(k) Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a dispute pursuant to subdivision (i), the investigative consumer reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (i). This notification shall be furnished to any person, specifically designated by the consumer, who has, within two years prior to the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for employment purposes, or who has, within one year of the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for any other purpose, if these investigative consumer reports contained the deleted or disputed information. The investigative consumer reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make a request for this notification.

(*l*) An investigative consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file and in investigative consumer reports information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (f).

(m) If the consumer's dispute is resolved by deletion of the disputed information within three business days, beginning with the day the investigative consumer reporting agency receives notice of the dispute in accordance with subdivision (a), the investigative consumer reporting agency shall be exempt from requirements for further action under subdivisions (g), (i), and (j), if the agency: (1) provides prompt notice of the deletion to the consumer by

telephone, (2) provides written confirmation of the deletion and a copy of an investigative consumer report of the consumer that is based on the consumer's file after the deletion, and (3) includes, in the telephone notice or in a written notice that accompanies the confirmation and report, a statement of the consumer's right to request under subdivision (k) that the agency furnish notifications under that subdivision.

(n) Any investigative consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.), shall implement an automated system through which furnishers of information to that agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other investigative consumer reporting agencies.

(o) All actions to be taken by an investigative consumer reporting agency under this section are governed by the applicable time periods specified in Section 611 of the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681i).

SEC. 9. Section 1786.26 of the Civil Code is amended to read:

1786.26. (a) An investigative consumer reporting agency shall make all disclosures pursuant to Sections 1786.10 and 1786.22 and furnish all investigative consumer reports pursuant to Section 1786.24, without charge, if requested by the consumer within 60 days after receipt by the consumer of a notification of adverse action pursuant to Section 1786.40 stating that adverse action may be or has been taken on the consumer.

(b) Except as otherwise provided in subdivision (d), an investigative consumer reporting agency may charge a consumer a fee not exceeding eight dollars ($8) for making disclosures to the consumer pursuant to Sections 1786.10, 1786.11, and 1786.22. Any charges shall be indicated to the consumer prior to disclosure.

(c) An investigative consumer reporting agency shall not impose any charge for providing notice to a consumer required under Section 1786.24 or notifying a person pursuant to subdivision (k) of Section 1786.24 of the deletion of information that is found to be inaccurate or that cannot be verified.

(d) Upon the request of the consumer, an investigative consumer reporting agency shall make all disclosures pursuant to Section 1786.10 and 1786.22 once during any 12-month period without charge to that consumer if the consumer certifies in writing that he or she (1) is unemployed and intends to apply for employment in the 60-day period beginning on the date the certification is made, (2) is a recipient of public welfare assistance, or (3) has reason to believe that the file on the consumer at the investigative consumer reporting agency contains inaccurate information due to fraud.

(e) An investigative consumer reporting agency shall not impose any charge on a consumer for providing any notification or making

any disclosure required by this title, except as authorized by this section.

SEC. 10. Section 1786.30 of the Civil Code is amended to read:

1786.30. Whenever an investigative consumer reporting agency prepares an investigative consumer report, no adverse information in the report (other than information that is a matter of public record, the status of which has been updated pursuant to Section 1786.28) may be included in a subsequent investigative consumer report unless that adverse information has been verified in the process of making the subsequent investigative consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

SEC. 11. Section 1786.40 of the Civil Code is amended to read:

1786.40. (a) Whenever insurance for personal, family, or household purposes, employment, or the hiring of a dwelling unit involving a consumer is denied or the charge for that insurance or the hiring of a dwelling unit is increased either wholly or partly because of information contained in an investigative consumer report from an investigative consumer reporting agency, the user of the investigative consumer report shall so advise the consumer against whom the adverse action has been taken and supply the name and address of the investigative consumer reporting agency making the report.

(b) Whenever insurance for personal, family, or household purposes involving a consumer is denied or the charge for that insurance is increased either wholly or in part because of information obtained from a person other than an investigative consumer reporting agency, the consumer, or another person related to the consumer and acting on the consumer's behalf and bearing upon the consumer's general reputation, personal characteristics or mode of living, the user of the information shall, within a reasonable period of time, and upon the consumer's written request for the reasons for the adverse action received within 60 days after learning of the adverse action, disclose the nature and substance of the information to the consumer. The user of the information shall clearly and accurately disclose to the consumer his or her right to make this written request at the time the adverse action is communicated to the consumer.

SEC. 12. Section 1786.50 of the Civil Code is amended to read:

1786.50. (a) Any investigative consumer reporting agency or user of information that fails to comply with any requirement under this title with respect to an investigative consumer report is liable to the consumer who is the subject of the report in an amount equal to the sum of all the following:

(1) Any actual damages sustained by the consumer as a result of the failure or, except in the case of class actions, two thousand five hundred dollars ($2,500), whichever sum is greater, and

(2) In the case of any successful action to enforce any liability under this chapter, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) If the court determines that the violation was grossly negligent or willful, the court may, in addition, assess, and the consumer may recover, punitive damages.

(c) Notwithstanding subdivision (a), an investigative consumer reporting agency or user of information that fails to comply with any requirement under this title with respect to an investigative consumer report shall not be liable to a consumer who is the subject of the report where the failure to comply results in a more favorable investigative consumer report than if there had not been a failure to comply.

CHAPTER 989

An act to add Section 33492.116 to the Health and Safety Code, relating to redevelopment, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 33492.116 is added to the Health and Safety Code, to read:

33492.116. (a) For purposes of the application of Section 106 of the National Historic Preservation Act (16 U.S.C. Sec. 470 et seq.) as it applies only to an area comprising the survey area created for redevelopment of the Tustin Marine Corps Air Station pursuant to Section 33310, if the City of Tustin's historic preservation program is certified pursuant to Section 101(c)(1) of that act (16 U.S.C. Sec. 470a(c)(1)), the City of Tustin may elect to assume any of the duties that are given to the state historic preservation officer by Part 800 of Title 36 of the Code of Federal Regulations or that originate from agreements concluded under those regulations. The state historic preservation officer shall agree to this assumption of duties by the City of Tustin.

(b) In assuming the duties of the state historic preservation officer pursuant to this section, the city shall ensure that a marketing and solicitation process is conducted to determine the feasibility of permanent reuse of Buildings 29 and 29A. The city shall be responsible for determining in good faith if there are qualified respondents to the marketing and solicitation process and determining if the permanent use of these properties in their historic condition is feasible. If it is determined that permanent use of these

historic properties is not feasible, the city shall require mitigation for the adverse effect on these historic properties prior to approving any undertaking.

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 mitigate the very serious economic effects resulting from the closure of the Tustin Marine Corps Air Station on the City of Tustin and the surrounding cities and the County of Orange, it is important that the redevelopment of the lands comprising the base be undertaken at the earliest possible time. Therefore, it is necessary that this act take effect immediately.

CHAPTER 990

An act to amend Sections 11010, 11011, and 15037 of, and to repeal Section 15076.7 of, the Unemployment Insurance Code, relating to job training.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 11010 of the Unemployment Insurance Code is amended to read:

11010. (a) The Legislature finds and declares the following:

(1) California must have a world class system of education and training linked to economic development in order to meet the demands of global economic competition.

(2) The California Economic Strategy Panel determined that California's economy is undergoing a dramatic transformation whereby California is in an established leadership position with respect to a number of emerging industries representing a new economy of the 21st century, and that education and work force preparation are critical to the growth and competitiveness of California's economy.

(3) California's work force preparation programs, including job training, job placement, and education, spend over six billion dollars ($6,000,000,000) annually serving 6,700,000 students, displaced and unemployed workers, welfare recipients, and incumbent workers.

(4) At least 22 state programs and many federal and local programs provide these work force preparation services.

(5) With the increasing demand to educate and train the youth and adults in this state with the skills necessary to obtain and retain employment especially in the industries essential for its economic

growth, California needs to maximize the effective use of resources for its work force preparation programs to create a more coherent, comprehensive, accountable, and customer-focused system.

(6) An effective work force preparation system is necessary for California to meet the time limit and work force preparation requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193).

(7) In order to accomplish this, the public and private sector entities responsible for economic development, education, and work force preparation must collaborate at the state and local levels.

(8) This collaboration must be compatible with the existing missions and governance structures of all entities involved.

(9) The major objective of this act is the integration of existing local and regional partnerships that support initiatives in education reform, work force preparation, and economic development.

(10) In order to promote this collaboration, the Secretary of the Health and Welfare Agency, the Secretary of the Trade and Commerce Agency, the Chancellor of the California Community Colleges, and the Superintendent of Public Instruction shall, in consultation with state, regional, and local stakeholders, and customers, collaborate in the development of a state work force development system and shall encourage and support local partners to develop regional work force collaboratives.

(b) The Legislature hereby enacts the Regional Workforce Preparation and Economic Development Act to demonstrate how, through the collaboration of state and local resources, education, work force preparation and economic development services can be delivered to clients in a more responsive, integrated, and effective manner.

SEC. 2. Section 11011 of the Unemployment Insurance Code is amended to read:

11011. (a) On or before April 1, 1998, the Secretary of the Health and Welfare Agency, the Secretary of the Trade and Commerce Agency, the Chancellor of the California Community Colleges with the consent of the Board of Governors, and the Superintendent of Public Instruction, with the consent of the State Board of Education, shall enter into a memorandum of understanding to develop and maintain a plan including a schedule to do the following:

(1) (A) Develop a state work force development plan to create an integrated, high-quality work force development system out of the current array of job training and vocational education programs in order to prepare emerging, transitional, and current workers to be employed in the state's global economy. The plan shall serve as a framework for the development of public policy, fiscal investment, and operation of all state work force education and training programs.

(B) The plan, which shall be updated every five years, shall, at a minimum, include all of the following:

(i) Long term goals for the state's work force development system.

(ii) Short term objectives and benchmarks that the state will use to measure its progress towards meeting the state's goals for the state work force development system and its programs.

(iii) Identification of the role each institution and program plays in the statewide system and mechanism of articulation among programs.

(iv) A strategy for assessing unmet work force preparation needs and areas of duplicative services and a description of measures to assure coordination, eliminate duplication, and maximize or redirect funding to more effectively deliver services to meet the state's work force development needs.

(v) A strategy for consolidating multiple planning processes.

(vi) A strategy with benchmarks for implementing a system of universal access to work force development services ensuring access to comprehensive services in all rural and urban areas of the state.

(C) The plan shall be developed through a collaborative process that shall include review and input by state, regional, and local work force education and training providers, private industry councils, and representatives of business and labor.

(D) A report with final recommendations on how state, local, and regional agencies and programs can deliver seamless, high-quality services to clients shall be transmitted to the Governor and the Legislature by October 1, 1999.

(2) Initiate a competitive process to select a minimum of five regional education, work force preparation, and economic development collaboratives, known as regional collaboratives, that will receive financial and program incentives to develop local partnerships to maximize the delivery of employment, training, and education services. These partnerships shall collaborate in the development of shared systems to improve their efficiency and effectiveness in delivering work force development services.

(3) Identify new and redirected resources, federal and state waivers, and legislative changes necessary to enhance the effectiveness of regional collaboratives.

(b) Regional collaboratives shall have representation from the following public and private entities:

(1) The Employment Development Department.

(2) The local Job Training Partnership Act administrative entity.

(3) Community college districts.

(4) Local school districts, including those that provide adult education and regional occupational centers or programs.

(5) Regional occupational centers serving adults.

(6) Entities administering local public assistance welfare-to-work programs.

(7) Local economic development organizations.

(8) The private sector, including both business and labor.

In addition, the competitive selection process shall emphasize the expectation that these regional collaboratives will have broad representation of all public, private, and nonprofit agencies that have an interest in education, economic development, welfare-to-work, and work force development.

(c) Regional collaboratives shall be selected and shall receive financial and program incentives effective July 1, 1998.

(d) From existing state and federal funds available for expenditure for the purposes of this section, the state partners shall identify five million dollars ($5,000,000) per year for each of three years for distribution to a minimum of five regional collaboratives, in order to create systemic change that results in increased collaboration and service delivery within each region.

SEC. 3. Section 15037 of the Unemployment Insurance Code is amended to read:

15037. The state council shall:

(a) Review and comment on the state work force development plan developed pursuant to Section 11011.

(b) Develop and recommend to the Governor and the Legislature a coordination and special services plan, which includes a dislocated workers assistance plan, in accordance with Chapter 4.5 (commencing with Section 10510) of Part 1 of Division 3.

(c) Recommend to the Governor local service delivery areas. To the extent permitted by federal law, designation of service delivery areas shall reflect the intent of the Legislature to integrate and coordinate employment and training services, public assistance programs, and other educational and training efforts as may exist which are designed to assist individuals in preparing for participation in the labor force.

(d) To the extent permitted by federal law, establish policies which shall be followed by the department in performing all of the following functions:

(1) Approval of local service delivery area plans.

(2) Establishment of standards, criteria, and reporting requirements established by the department pursuant to this division with respect to local service delivery area plans.

(3) Allocation of funds for local service delivery area plans, including funds for plans submitted under Chapter 7.5 (commencing with Section 15075).

(e) Plan, review and approve the allocation, recapture, and reallocation of federal funds received by the state pursuant to the federal Job Training Partnership Act. Funds received by the state in accordance with Sections 202(c)(1)(C) and 262 (c)(1)(C) of that act shall be allocated to the Superintendent of Public Instruction as necessary to meet the need determined by the superintendent pursuant to Section 33117.5 of the Education Code. The state council shall be deemed to have approved the disbursement of funds when the Governor approves a decision of the state council specifying a

budget for an authorized program or activity and designating the department or agency responsible for the expenditure of the budgeted funds. An agreement shall be entered into between the Employment Development Department and the State Department of Education and shall provide that Job Training Partnership Act funds provided for the purposes of Section 33117.5 of the Education Code shall be utilized for payment to local educational agencies.

(f) Review and approve the annual labor market and occupational supply and demand information plan developed pursuant to Section 10532.

(g) Consider and advise the director on all matters connected with the administration of this code as submitted to it by the director, and may upon its own initiative recommend changes in administration as it deems necessary.

(h) Review and comment to the Governor and the Legislature on the annual report prepared in accordance with Section 15064.

(i) Serve as the body responsible for making recommendations to the Governor when the director proposes to withdraw funding pursuant to Section 15028.

SEC. 4. Section 15076.7 of the Unemployment Insurance Code is repealed.

CHAPTER 991

An act to amend Sections 473, 2602, 2603, 2604, 2607.5, 3010, 3014.5, 3710, 3711, 3712, 3713, 3716, 3775, 3775.1, 3776, 4925, 4928, 4929, 4934, 4935, 4970, 8000, and 8005 of, to amend and repeal Section 2620.5 of, and to add Sections 104, 3712.5, 3775.2, and 8006 to, the Business and Professions Code, relating to regulatory boards and committees, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 104 is added to the Business and Professions Code, to read:

104. All boards or other regulatory entities within the department's jurisdiction that the department determines to be health-related may adopt regulations to require licensees to display their licenses or registrations in the locality in which they are treating patients, and to inform patients as to the identity of the regulatory agency they may contact if they have any questions or complaints regarding the licensee. In complying with this requirement, those boards may take into consideration the particular settings in which licensees practice, or other circumstances which may make the

displaying or providing of information to the consumer extremely difficult for the licensee in their particular type of practice.

SEC. 2. Section 473 of the Business and Professions Code is amended to read:

473. (a) There is hereby established the Joint Legislative Sunset Review Committee.

(b) The Joint Legislative Sunset Review Committee shall consist of three members appointed by the Senate Committee on Rules and three members appointed by the Speaker of the Assembly. No more than two of the three members appointed from either the Senate or the Assembly shall be from the same party. The Joint Rules Committee shall appoint the chairperson of the committee.

(c) The Joint Legislative Sunset Review Committee shall have and exercise all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which provisions are incorporated herein and made applicable to this committee and its members.

(d) The Speaker of the Assembly and the Senate Committee on Rules may designate staff for the Joint Legislative Sunset Review Committee.

(e) The Joint Legislative Sunset Review Committee is authorized to act until January 1, 2004, at which time the committee's existence shall terminate.

SEC. 3. Section 2602 of the Business and Professions Code is amended to read:

2602. The Physical Therapy Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, 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).

SEC. 4. Section 2603 of the Business and Professions Code is amended to read:

2603. The members of the board consist of the following: one physical therapist involved in the education of physical therapists, three physical therapists who shall have practiced physical therapy for five years and shall be licensed by the board, and three public members who shall not be licentiates of the board or of any other board under the Medical Board of California or of any board referred to in Sections 1000 and 3600.

SEC. 5. Section 2604 of the Business and Professions Code is amended to read:

2604. The members of the board shall be appointed for a term of four years, expiring on the first day of June of each year.

The Governor shall appoint one of the public members and the four physical therapist members of the board qualified as provided in Section 2603. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member, and their initial appointment shall be made to fill, respectively, the first and second public member vacancies which occur on or after January 1, 1983.

Not more than one member of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.

No person may serve as a member of the board for more than two consecutive terms. Vacancies shall be filled by appointment for the unexpired term. Annually, the board shall elect one of its members as president.

The appointing power shall have the power to remove any member of the board from office for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

SEC. 6. Section 2607.5 of the Business and Professions Code is amended to read:

2607.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, 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).

SEC. 7. Section 2620.5 of the Business and Professions Code is amended to read:

2620.5. A physical therapist may, upon specified authorization of a physician and surgeon, perform tissue penetration for the purpose of evaluating neuromuscular performance as a part of the practice of physical therapy, as defined in Section 2620, provided the physical therapist is certified by the board to perform the tissue penetration and evaluation; and provided the physical therapist does not develop or make diagnostic or prognostic interpretations of the data obtained.

The board, after meeting and conferring with the Division of Licensing of the Medical Board of California, shall:

(a) Adopt standards and procedures for tissue penetration for the purpose of evaluating neuromuscular performance by certified physical therapists.

(b) Establish standards for physical therapists to perform tissue penetration for the purpose of evaluating neuromuscular performance.

(c) Certify physical therapists meeting standards established by the board pursuant to this section.

(d) The Physical Therapy Board shall undertake a study assessing the need for, and potential alternatives to, the certification requirement provided for in subdivision (c) and report its findings to the Legislature on or before October 1, 1999.

(e) This section shall remain in effect until December 31, 2000, and as of that date is repealed unless a later enacted statute, which becomes effective on or before December 31, 2000, deletes or extends that date.

SEC. 8. Section 3010 of the Business and Professions Code is amended to read:

3010. There is in the Department of Consumer Affairs a State Board of Optometry in which the enforcement of this chapter is vested. The board consists of nine members, three of whom shall be public members.

Six members of the board shall constitute a quorum.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, 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).

SEC. 9. Section 3014.5 of the Business and Professions Code is amended to read:

3014.5. The board may appoint a person exempt from civil service who shall be designated as an executive officer and who shall exercise the powers and perform the duties delegated by the board and vested in him or her by this chapter.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, 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).

SEC. 10. Section 3710 of the Business and Professions Code is amended to read:

3710. The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter.

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 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).

SEC. 11. Section 3711 of the Business and Professions Code is amended to read:

3711. The members of the board shall be the following: one physician and surgeon, four respiratory care practitioners, each of

whom shall have practiced respiratory care and four public members who shall not be licensed by the board.

SEC. 12. Section 3712 of the Business and Professions Code is amended to read:

3712. The members of the board shall be appointed as follows:

(a) Two respiratory care practitioners and one public member shall be appointed by the Speaker of the Assembly.

(b) One physician and surgeon, one respiratory care practitioner, and one public member shall be appointed by the Senate Rules Committee.

(c) One respiratory care practitioner, and two public members shall be appointed by the Governor.

Appointments shall be made for four-year terms, expiring on the first day of June of each year, and vacancies shall be filled for the unexpired term.

No member shall serve for more than two consecutive terms. Not more than two members of the board shall be appointed from the full-time faculty of any university, college, or other educational institution.

Annually, the board shall elect one of its members as president.

The appointing power shall have the authority to remove any member of the board from office for neglect of any duty required by law or for incompetency or unprofessional or dishonorable conduct.

SEC. 13. Section 3712.5 is added to the Business and Professions Code, to read:

3712.5. The Respiratory Care Board shall report to the Legislature on or before October 1, 2000, as to what efforts it has made to rectify its budgetary problems and revise its enforcement program.

SEC. 13.5. Section 3713 of the Business and Professions Code is amended to read:

3713. (a) The public members shall be appointed from persons having the following qualifications:

(1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) Shall not be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.

(4) Shall not be licensed by the board or by any board under this division.

(5) Shall have no pecuniary interests in the provision of health care.

(b) The respiratory care practitioner members shall be appointed from persons licensed as respiratory care practitioners having the following qualifications:

(1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) One respiratory care practitioner shall be an officer or faculty member of any college, school, or institution engaged in respiratory therapy education.

(4) Three respiratory care practitioners shall be involved in direct patient care.

(5) Have at least five years' experience in respiratory care or respiratory therapy education, and have been actively engaged therein for at least three years immediately preceding appointment.

(c) The physician and surgeon member shall be appointed from persons having the following qualifications:

(1) Be a citizen of the United States of America.

(2) Be a resident of the State of California.

(3) Be a licensed practicing physician and surgeon in the State of California.

(4) Be knowledgeable in respiratory care.

SEC. 14. Section 3716 of the Business and Professions Code is amended to read:

3716. The board may employ an executive officer exempt from civil service and, subject to the provisions of law relating to civil service, clerical assistants and, except as provided in Section 159.5, other employees as it may deem necessary to carry out its powers and duties.

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 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).

SEC. 14.1. Section 3775 of the Business and Professions Code is amended to read:

3775. The amount of fees provided in connection with licenses or approvals for the practice of respiratory care shall be as follows:

(a) The application fee shall be established by the board at not more than three hundred dollars ($300). The application fee for the applicant under subdivision (b) of Section 3740 shall be established by the board at not more than three hundred fifty dollars ($350).

(b) The fees for any examination or reexamination required by the board shall be the actual cost to the board for developing, purchasing, grading, and administering each examination or reexamination.

(c) The initial license fee for a respiratory care practitioner shall be no more than three hundred dollars ($300).

(d) For any license term beginning on or after January 1, 1999, the renewal fee shall be established at two hundred thirty dollars ($230). The board may increase the renewal fee, by regulation, to an amount not to exceed three hundred thirty dollars ($330). The board shall fix the renewal fee so that, together with the estimated amount from revenue, the reserve balance in the board's contingent fund shall be

equal to approximately six months of annual authorized expenditures. If the estimated reserve balance in the board's contingent fund will be greater than six months, the board shall reduce the renewal fee. In no case shall the fee in any year be more than 10 percent greater than the amount of the fee in the preceding year.

(e) The delinquency fee shall be established by the board at not more than the following amounts:

(1) If the license is renewed not more than two years from the date of its expiration, the delinquency fee shall be 100 percent of the renewal fee in effect at the time or renewal.

(2) If the license is renewed after two years, but not more than three years, from the date of expiration of the license, the delinquency fee shall be 200 percent of the renewal fee in effect at the time of renewal.

(f) The duplicate license fee shall be seventy-five dollars ($75).

(g) The endorsement fee shall be one hundred dollars ($100).

(h) Costs incurred by the board in order to obtain and review documents or information related to the criminal history of, rehabilitation of, disciplinary actions taken by another state agency against, or acts of negligence in the practice of respiratory care by, an applicant or licensee, shall be paid by the applicant or licensee before a license will be issued or a subsequent renewal processed.

(i) Fees paid in any form other than check, money order, or cashier's check shall be subject to an additional processing charge equal to the board's actual processing costs.

(j) Fees incurred by the board to process return mail shall be paid by the applicant or licensee for whom the charges were incurred.

(k) Notwithstanding any other provision of this chapter, the board, in its discretion, may reduce the amount of any fee otherwise prescribed by this section.

SEC. 14.2. Section 3775.1 of the Business and Professions Code is amended to read:

3775.1. (a) The fee for the approval of respiratory therapy schools shall be established by the board at no more than the actual cost to the board.

(b) The fee for the renewal or approval of respiratory therapy schools, who certify on forms provided by the board that no substantive changes have occurred, shall be established by the board at no more than the actual cost to the board, to be paid on a biennial basis.

(c) The fee for the inspection or reinspection of a respiratory therapy school for the purposes of approval, reapproval, or the investigation of a complaint of noncompliance shall be established by the board at an amount to recover the actual costs incurred by the board.

(d) The review fee for the coursework and grades of an official transcript of an applicant shall be established by the board at no more than the actual cost to the board.

SEC. 14.3. Section 3775.2 is added to the Business and Professions Code, to read:

3775.2. (a) The fee for approval of providers of continuing education shall be established by the board at not more than the following:

(1) The initial application approval fee shall be seven hundred dollars ($700).

(2) The annual renewal fee shall be three hundred fifty dollars ($350).

(3) The fee for rereview or additional approval of any amendments to existing providers shall be three hundred fifty dollars ($350).

(b) The delinquency fee for the annual renewal fee shall be 50 percent of the annual renewal fee.

SEC. 14.4. Section 3776 of the Business and Professions Code is amended to read:

3776. (a) Any person who submits to the board a check for fees that is returned unpaid shall pay all subsequent required fees by cashier's check or money order.

(b) Any person who submits to the board a check for fees that is returned unpaid shall be assessed an additional processing fee as determined by the board.

SEC. 15. Section 4925 of the Business and Professions Code is amended to read:

4925. (a) This chapter constitutes the chapter on acupuncture of the Business and Professions Code.

This chapter shall be known and may be cited as the Acupuncture Licensure Act. Whenever a reference is made to the Acupuncture Licensure Act by the provisions of any statute, it is to be construed as referring to the provisions of this chapter.

(b) Any reference in this chapter, or to the regulations pertaining thereto, to "certificate" or "certification" shall hereafter mean "license" or "licensure." Any reference to the term "certifying" means "licensing," and the term "certificate holder" means "licensee." Any reference to the "Acupuncture Committee" or "committee" means the "Acupuncture Board" or "board."

SEC. 16. Section 4928 of the Business and Professions Code is amended to read:

4928. The Acupuncture Board, which consists of nine members, shall enforce and administer this chapter.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, 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).

SEC. 17. Section 4929 of the Business and Professions Code is amended to read:

4929. Four members of the committee shall be acupuncturists with at least five years of experience in acupuncture and not licensed as physicians and surgeons, one member of the committee shall be a physician and surgeon licensed in this state with two years of experience in acupuncture, and four members shall be public members who do not hold a license or certificate as a physician and surgeon or acupuncturist.

The Governor shall appoint the four acupuncturist members qualified as provided in this section, who shall be appointed to represent a cross section of the cultural backgrounds of licensed members of the acupuncturist profession, two of the public members, and the one licensed physician and surgeon member qualified as provided in this section. All members appointed to the committee by the Governor shall be subject to confirmation by the Senate. The Senate Rules Committee and the Speaker of the Assembly shall each appoint a public member. Any member of the committee may be removed by the appointing power for neglect of duty, misconduct, or malfeasance in office, after being provided with a written statement of the charges and an opportunity to be heard.

SEC. 18. Section 4934 of the Business and Professions Code is amended to read:

4934. The board shall employ personnel necessary for the administration of this chapter; however, the committee may appoint an executive officer who is exempt from the provisions of the Civil Service Act.

This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2004, 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).

SEC. 19. Section 4935 of the Business and Professions Code is amended to read:

4935. (a) Any person who practices acupuncture or holds himself or herself out as practicing or engaging in the practice of acupuncture, unless he or she possesses an acupuncturist's license, is guilty of a misdemeanor.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises

another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words "acupuncture," "acupuncturist," "certified acupuncturist," "licensed acupuncturist," "oriental medicine," or any combination of those words, phrases, or abbreviations of those words or phrases, or by representing that he or she is trained, experienced, or an expert in the field of acupuncture, oriental medicine, or Chinese medicine.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training when he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the committee and participating in a postgraduate review course that does not exceed six months in duration at a school approved by the board.

SEC. 20. Section 4970 of the Business and Professions Code is amended to read:

4970. The amount of fees prescribed for certified acupuncturists shall be those set forth in this section unless a lower fee is fixed by the committee in accordance with Section 4972:

(a) The application fee shall be seventy-five dollars ($75).

(b) The examination and reexamination fees shall be the actual cost to the Acupuncture Board for the development and writing of, grading, and administering of each examination.

(c) The initial certification fee shall be three hundred twenty-five dollars ($325), except that if the certificate will expire less than one year after its issuance, then the initial certification fee shall be an amount equal to 50 percent of the initial certification fee.

(d) The renewal fee shall be three hundred twenty-five dollars ($325) and in the event a lower fee is fixed by the committee, shall be an amount sufficient to support the functions of the board and committee in the administration of this chapter. The renewal fee shall be assessed on an annual basis until January 1, 1996, and on and after that date the committee shall assess the renewal fee biennially.

(e) The delinquency fee shall be set in accordance with Section 163.5.

(f) The application fee for the approval of a school or college under Section 4939 shall be three thousand dollars ($3,000).

(g) The duplicate wall certificate fee is an amount equal to the cost to the committee for the issuance of the duplicate certificate.

(h) The duplicate renewal receipt fee is ten dollars ($10).

(i) The endorsement fee is ten dollars ($10).

(j) The fee for a duplicate certificate for an additional office location as required under Section 4961 shall be fifteen dollars ($15).

SEC. 21. Section 8000 of the Business and Professions Code is amended to read:

8000. There is in the Department of Consumer Affairs a Court Reporters Board of California, which consists of five members, three of whom shall be public members and two of whom shall be holders of certificates issued under this chapter who have been actively engaged as shorthand reporters within this state for at least five years immediately preceding their appointment.

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. The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473), except that the review shall be limited to only those unresolved issues identified by the Joint Legislative Sunset Review Committee.

SEC. 22. Section 8005 of the Business and Professions Code is amended to read:

8005. The Court Reporters Board of California is charged with the executive functions necessary for effectuating the purposes of this chapter. It may appoint committees as it deems necessary or proper. The board may appoint, prescribe the duties, and fix the salary of an executive officer. Except as provided by Section 159.5, the board may also employ other employees as may be necessary, subject to civil service and other provisions of law.

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.

The repeal of this section renders the board subject to the review required by Division 1.2 (commencing with Section 473), except that the review shall be limited to the board's examination program.

SEC. 23. Section 8006 is added to the Business and Professions Code, to read:

8006. The Court Reporters Board of California shall provide to the Joint Legislative Sunset Review Committee, no later than October 1, 1999, an assessment of all of the possible causes of the low pass rate for its examination and recommendations to improve the pass rate and education of shorthand reporters. This assessment shall be done in conjunction with schools providing shorthand court reporting training programs, with the Department of Consumer Affair's Bureau for Private Postsecondary and Vocational Education, and Office of Examination Resources. The board shall present a plan to offer both the written and dictation portions of the licensing examination more than twice per year, and substantiate any need to increase the examination fee.

SEC. 24. The amendment to Section 2620.5 of the Business and Professions Code made by Section 7 of this act shall become operative July 1, 2000.

CHAPTER 992

An act to amend Sections 7841 and 7887 of the Business and Professions Code, relating to regulated professions, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 7841 of the Business and Professions Code is amended to read:

7841. An applicant for registration as a geologist shall have all the following qualifications:

(a) Not have committed any acts or crimes constituting grounds for denial of licensure under Section 480.

(b) Meet one of the following educational requirements fulfilled at a school or university whose geological curricula meet criteria established by rules of the board:

(1) Graduation with a major in geology.

(2) Completion of 30 semester units in geological science courses leading to a major in geology, of which at least 24 units are in the third or fourth year, or graduate courses.

(c) Have at least seven years of professional geological work which shall include either a minimum of three years of professional geological work under the supervision of a registered geologist or a registered civil or petroleum engineer, except that prior to July 1, 1970, professional geological work shall qualify under this subdivision if it is under the supervision of a qualified geologist or a registered civil or petroleum engineer, or a minimum of five years' experience in responsible charge of professional geological work. Professional geological work does not include routine sampling, laboratory work, or geological drafting.

Each year of undergraduate study in the geological sciences shall count as one-half year of training up to a maximum of two years, and each year of graduate study or research counts as a year of training.

Teaching in the geological sciences at college level shall be credited year for year toward meeting the requirement in this category, provided that the total teaching experience includes six semester units per semester, or equivalent if on the quarter system, of third or fourth year or graduate courses.

Credit for undergraduate study, graduate study, and teaching, individually, or in any combination thereof, shall in no case exceed a total of four years towards meeting the requirement for at least seven years of professional geological work as set forth above.

The ability of the applicant shall have been demonstrated by the applicant having performed the work in a responsible position, as the term "responsible position" is defined in regulations adopted by the board. The adequacy of the required supervision and experience shall be determined by the board in accordance with standards set forth in regulations adopted by it.

(d) Successfully pass a written examination that incorporates a national examination for geologists created by a nationally recognized entity approved by the board, and a supplemental California specific examination. The California specific examination shall test the applicant's knowledge of state laws, rules and regulations, and of seismicity and geology unique to practice within this state. The board shall use the national examination on or before June 30, 2000.

SEC. 2. Section 7887 of the Business and Professions Code is amended to read:

7887. The amount of the fees prescribed by this chapter shall be fixed by the board in accordance with the following schedule:

(a) The fee for filing each application for registration as a geologist or a geophysicist or certification as a specialty geologist or a specialty geophysicist and for administration of the examination at not more than two hundred and fifty dollars ($250).

(b) The registration fee for a geologist or for a geophysicist and the fee for the certification in a specialty shall be fixed at an amount equal to the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued, except that, with respect to certificates which will expire less than one year after issuance, the fee shall be fixed at an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date before the date on which the certificate is issued. The board may, by appropriate regulation, provide for the waiver or refund of the initial certificate fee where the certificate is issued less than 45 days before the date on which it will expire.

(c) The duplicate certificate fee at not more than six dollars ($6).

(d) The temporary registration fee for a geologist or for a geophysicist at not more than eighty dollars ($80).

(e) The renewal fee for a geologist or for a geophysicist shall be fixed by the board at not more than two hundred dollars ($200).

(f) The renewal fee for a specialty geologist or for a specialty geophysicist at not more than fifty dollars ($50).

(g) Notwithstanding Section 163.5, the delinquency fee for a certificate is an amount equal to 50 percent of the renewal fee in effect on the last regular renewal date.

(h) The fees fixed by the board pursuant to subdivisions (e) and (f), as of January 1, 1993, shall not be increased.

(i) Each applicant for registration as a geologist shall pay an examination fee fixed by the board at an amount equal to the actual cost to the board for the purchase of a national examination for geologists created by a nationally recognized entity approved by the board, including a supplemental California specific examination, and shall not exceed three hundred dollars ($300).

(j) Each applicant for registration as a geophysicist or certification as an engineering geologist or certification as a hydrogeologist shall pay an examination fee fixed by the board at an amount equal to the actual cost to the board for the development and maintenance of the written examination, and shall not exceed one hundred dollars ($100).

CHAPTER 993

An act to add Section 16531.1 to the Government Code, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 16531.1 is added to the Government Code, to read:

16531.1. (a) Notwithstanding any other provision of law and without regard to fiscal year, if the annual State Budget is not enacted by June 30 of any fiscal year preceding the fiscal year to which the budget would apply, both of the following shall occur:

(1) The Controller shall annually transfer from the General Fund, in the form of one or more loans, an amount not to exceed a cumulative total of one billion dollars ($1,000,000,000) in any fiscal year, to the Medical Providers Interim Payment Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the Medical Providers Interim Payment Fund is hereby continuously appropriated for the purpose of making payments to Medi-Cal providers, providers of services under Chapter 6 (commencing with Section 120950) of Part 4 of Division 105 of the Health and Safety Code, and providers of services under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, for services provided on or after July 1 of the fiscal year for which no budget has been enacted and before September 1 of that year. Payments shall be made pursuant to this subdivision if both of the following conditions have been met:

(A) An invoice has been submitted for the services.

(B) Payment for the services is due and payable and the State Department of Health Services determines that payment would be valid.

(2) For any fiscal year to which this subdivision applies, there is hereby appropriated the sum of one billion dollars ($1,000,000,000) from the Federal Trust Fund to the Medical Providers Interim Payment Fund.

(b) Upon the enactment of the annual Budget Act in any fiscal year to which subdivision (a) applies, the Controller shall transfer all expenditures and unexpended funds in the Medical Providers Interim Payment Fund to the appropriate Budget Act item.

(c) The amount of any loan made pursuant to subdivision (a) and for which moneys were expended from the Medical Providers Interim Payment Fund shall be repaid by debiting the appropriate Budget Act item in accordance with the procedure prescribed by the Department of Finance.

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 uninterrupted delivery of health care services to Medi-Cal beneficiaries and critical drug treatments to persons infected with the human immunodeficiency virus (HIV), it is necessary that this act take effect immediately.

CHAPTER 994

An act to amend, repeal, and add Section 1363 of, to amend Section 1363.01 of, and to add Section 1371.35 to, the Health and Safety Code, and to add Section 10123.147 to the Insurance Code, relating to health care coverage.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 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.

(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.

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

SEC. 2. Section 1363 is added to the Health and Safety Code, 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. The first page of the disclosure form shall contain a notice that conforms with all of the following conditions:

(A) (i) States that the evidence of coverage discloses the terms and conditions of coverage.

(ii) States, with respect to individual plan contracts, small group plan contracts, and any other group plan contracts for which health care services are not negotiated, that the applicant has a right to view the evidence of coverage prior to enrollment, and, 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 applicants, upon request, prior to enrollment and 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.

(j) This section shall become operative July 1, 1999.

SEC. 3. Section 1363.01 of the Health and Safety Code, as added by Section 1 of Chapter 68 of the Statutes of 1998, is amended 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.

(d) This section shall become operative July 1, 1999.

SEC. 4. Section 1371.35 is added to the Health and Safety Code, to read:

1371.35. (a) A health care service plan, including a specialized health care service plan, shall reimburse each complete claim, or portion thereof, whether in state or out of state, as soon as practical, but no later than 30 working days after receipt of the complete claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the complete claim by the health care service plan. However, a plan may contest or deny a claim, or portion thereof, by notifying the claimant, in writing, that the claim is contested or denied, within 30 working days after receipt of the claim by the health care service plan, or if the health care service plan is a health maintenance organization, 45 working days after receipt of the claim by the health care service plan. The notice that a claim, or portion thereof, is contested shall identify the portion of the claim that is contested, by revenue code, and the specific information needed from the provider to reconsider the claim. The notice that a claim, or portion thereof, is denied shall identify the portion of the claim that is denied, by revenue code, and the specific reasons for the denial. A plan may delay payment of an uncontested portion of a complete claim for reconsideration of a contested portion of that claim so long as the plan pays those charges specified in subdivision (b).

(b) If a complete claim, or portion thereof, that is neither contested nor denied, is not reimbursed by delivery to the claimant's address of record within the respective 30 or 45 working days after receipt, the plan shall pay the greater of fifteen dollars ($15) per year or interest at the rate of 10 percent per annum beginning with the first calendar day after the 30- or 45-working-day period. A health care service plan shall automatically include the fifteen dollars ($15)

per year or interest due in the payment made to the claimant, without requiring a request therefor.

(c) For the purposes of this section, a claim, or portion thereof, is reasonably contested if the plan has not received the completed claim. A paper claim from an institutional provider shall be deemed complete upon submission of a legible emergency department report and a completed UB 92 or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the plan within 30 working days of receipt of the claim. An electronic claim from an institutional provider shall be deemed complete upon submission of an electronic equivalent to the UB 92 or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the plan within 30 working days of receipt of the claim. However, if the plan requests a copy of the emergency department report within the 30 working days after receipt of the electronic claim from the institutional provider, the plan may also request additional reasonable relevant information within 30 working days of receipt of the emergency department report, at which time the claim shall be deemed complete. A claim from a professional provider shall be deemed complete upon submission of a completed HCFA 1500 or its electronic equivalent or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the plan within 30 working days of receipt of the claim. The provider shall provide the plan reasonable relevant information within 10 working days of receipt of a written request that is clear and specific regarding the information sought. If, as a result of reviewing the reasonable relevant information, the plan requires further information, the plan shall have an additional 15 working days after receipt of the reasonable relevant information to request the further information, notwithstanding any time limit to the contrary in this section, at which time the claim shall be deemed complete.

(d) This section shall not apply to claims about which there is evidence of fraud and misrepresentation, to eligibility determinations, or in instances where the plan has not been granted reasonable access to information under the provider's control. A plan shall specify, in a written notice sent to the provider within the respective 30- or 45-working days of receipt of the claim, which, if any, of these exceptions applies to a claim.

(e) If a claim or portion thereof is contested on the basis that the plan has not received information reasonably necessary to determine payer liability for the claim or portion thereof, then the plan shall have 30 working days or, if the health care service plan is a health maintenance organization, 45 working days after receipt of this additional information to complete reconsideration of the claim. If a claim, or portion thereof, undergoing reconsideration is not reimbursed by delivery to the claimant's address of record within the respective 30 or 45 working days after receipt of the additional

information, the plan shall pay the greater of fifteen dollars ($15) per year or interest at the rate of 10 percent per annum beginning with the first calendar day after the 30- or 45-working-day period. A health care service plan shall automatically include the fifteen dollars ($15) per year or interest due in the payment made to the claimant, without requiring a request therefor.

(f) The obligation of the plan to comply with this section shall not be deemed to be waived when the plan requires its medical groups, independent practice associations, or other contracting entities to pay claims for covered services. This section shall not be construed to prevent a plan from assigning, by a written contract, the responsibility to pay interest and late charges pursuant to this section to medical groups, independent practice associations, or other entities.

(g) A plan shall not delay payment on a claim from a physician or other provider to await the submission of a claim from a hospital or other provider, without citing specific rationale as to why the delay was necessary and providing a monthly update regarding the status of the claim and the plan's actions to resolve the claim, to the provider that submitted the claim.

(h) A health care service plan shall not request or require that a provider waive its rights pursuant to this section.

(i) This section shall not apply to capitated payments.

(j) This section shall apply only to claims for services rendered to a patient who was provided emergency services and care as defined in Section 1317.1 in the United States on or after September 1, 1999.

(k) This section shall not be construed to affect the rights or obligations of any person pursuant to Section 1371.

(*l*) This section shall not be construed to affect a written agreement, if any, of a provider to submit bills within a specified time period.

SEC. 5. Section 10123.147 is added to the Insurance Code, to read:

10123.147. (a) Every insurer issuing group or individual policies of disability insurance that covers hospital, medical, or surgical expenses, including those telemedicine services covered by the insurer as defined in subdivision (a) of Section 2290.5 of the Business and Professions Code, shall reimburse each complete claim, or portion thereof, whether in state or out of state, as soon as practical, but no later than 30 working days after receipt of the complete claim by the insurer. However, an insurer may contest or deny a claim, or portion thereof, by notifying the claimant, in writing, that the claim is contested or denied, within 30 working days after receipt of the complete claim by the insurer. The notice that a claim, or portion thereof, is contested shall identify the portion of the claim that is contested, by revenue code, and the specific information needed from the provider to reconsider the claim. The notice that a claim, or portion thereof, is denied shall identify the portion of the claim that is denied, by revenue code, and the specific reasons for the

denial. An insurer may delay payment of an uncontested portion of a complete claim for reconsideration of a contested portion of that claim so long as the insurer pays those charges specified in subdivision (b).

(b) If a complete claim, or portion thereof, that is neither contested nor denied, is not reimbursed by delivery to the claimant's address of record within the 30 working days after receipt, the insurer shall pay the greater of fifteen dollars ($15) per year or interest at the rate of 10 percent per annum beginning with the first calendar day after the 30-working-day period. An insurer shall automatically include the fifteen dollars ($15) per year or interest due in the payment made to the claimant, without requiring a request therefor.

(c) For the purposes of this section, a claim, or portion thereof, is reasonably contested if the insurer has not received the completed claim. A paper claim from an institutional provider shall be deemed complete upon submission of a legible emergency department report and a completed UB 92 or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the insurer within 30 working days of receipt of the claim. An electronic claim from an institutional provider shall be deemed complete upon submission of an electronic equivalent to the UB 92 or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the insurer within 30 working days of receipt of the claim. However, if the insurer requests a copy of the emergency department report within the 30 working days after receipt of the electronic claim from the institutional provider, the insurer may also request additional reasonable relevant information within 30 working days of receipt of the emergency department report, at which time the claim shall be deemed complete. A claim from a professional provider shall be deemed complete upon submission of a completed HCFA 1500 or its electronic equivalent or other format adopted by the National Uniform Billing Committee, and reasonable relevant information requested by the insurer within 30 working days of receipt of the claim. The provider shall provide the insurer reasonable relevant information within 15 working days of receipt of a written request that is clear and specific regarding the information sought. If, as a result of reviewing the reasonable relevant information, the insurer requires further information, the insurer shall have an additional 15 working days after receipt of the reasonable relevant information to request the further information, notwithstanding any time limit to the contrary in this section, at which time the claim shall be deemed complete.

(d) This section shall not apply to claims about which there is evidence of fraud and misrepresentation, to eligibility determinations, or in instances where the plan has not been granted reasonable access to information under the provider's control. An insurer shall specify, in a written notice to the provider within 30

working days of receipt of the claim, which, if any, of these exceptions applies to a claim.

(e) If a claim or portion thereof is contested on the basis that the insurer has not received information reasonably necessary to determine payer liability for the claim or portion thereof, then the insurer shall have 30 working days after receipt of this additional information to complete reconsideration of the claim. If a claim, or portion thereof, undergoing reconsideration is not reimbursed by delivery to the claimant's address of record within the 30 working days after receipt of the additional information, the insurer shall pay the greater of fifteen dollars ($15) per year or interest at the rate of 10 percent per annum beginning with the first calendar day after the 30-working-day period. An insurer shall automatically include the fifteen dollars ($15) per year or interest due in the payment made to the claimant, without requiring a request therefor.

(f) An insurer shall not delay payment on a claim from a physician or other provider to await the submission of a claim from a hospital or other provider, without citing specific rationale as to why the delay was necessary and providing a monthly update regarding the status of the claim and the insurer's actions to resolve the claim, to the provider that submitted the claim.

(g) An insurer shall not request or require that a provider waive its rights pursuant to this section.

(h) This section shall apply only to claims for services rendered to a patient who was provided emergency services and care as defined in Section 1317.1 of the Health and Safety Code in the United States on or after September 1, 1999.

(i) This section shall not be construed to affect the rights or obligations of any person pursuant to Section 10123.13.

(j) This section shall not be construed to affect a written agreement, if any, of a provider to submit bills within a specified time period.

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 995

An act to amend Section 1300 of, and to add Sections 1255.1, 1255.2, 1255.3, and 1364.1 to, the Health and Safety Code, relating to emergency medical services.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1255.1 is added to the Health and Safety Code, to read:

1255.1. (a) Any hospital that provides emergency medical services under Section 1255 shall, as soon as possible, but not later than 90 days prior to a planned reduction or elimination of the level of emergency medical services, provide notice of the intended change to the state department, the local government entity in charge of the provision of health services, and all health care service plans or other entities under contract with the hospital to provide services to enrollees of the plan or other entity.

(b) In addition to the notice required by subdivision (a), the hospital shall, within the time limits specified in subdivision (a), provide public notice of the intended change in a manner that is likely to reach a significant number of residents of the community serviced by that facility.

(c) A hospital shall not be subject to this section or Section 1255.2 if the state department does either of the following:

(1) Determines that the use of resources to keep the emergency center open substantially threatens the stability of the hospital as a whole.

(2) Cites the emergency center for unsafe staffing practices.

SEC. 2. Section 1255.2 is added to the Health and Safety Code, to read:

1255.2. A health facility implementing a downgrade or change shall make reasonable efforts to ensure that the community served by its facility is informed of the downgrade or closure. Reasonable efforts may include, but not be limited to, advertising the change in terms likely to be understood by a layperson, soliciting media coverage regarding the change, informing patients of the facility of the impending change, and notifying contracting health care service plans as required in Section 1255.1.

SEC. 3. Section 1255.3 is added to the Health and Safety Code, to read:

1255.3. On or before June 30, 1999, with the state department as the lead agency, the state department and the Emergency Medical Services Authority, in consultation with hospitals and other health care providers and local emergency medical services agencies, shall

designate signage requirements for a health facility holding a special permit for a standby emergency medical service located in an urban area. The signage shall not include the word "emergency" and shall reflect the type of emergency services provided by the facility, and be easily understood by the average person. The facility shall not post signs, distribute literature, or advertise that emergency services are available at the facility. Nothing in this section shall be construed to mean that a facility is no longer providing emergency services for purposes of billing or reimbursement. A small and rural hospital, as defined in Section 124840, is not subject to the requirements of this section.

SEC. 4. Section 1300 of the Health and Safety Code is amended to read:

1300. (a) Any licensee or holder of a special permit may, with the approval of the state department, surrender his or her license or special permit for suspension or cancellation by the state department. Any license or special permit suspended or canceled pursuant to this section may be reinstated by the state department on receipt of an application showing compliance with the requirements of Section 1265.

(b) Before approving a downgrade or closure of emergency services pursuant to subdivision (a), the state department shall receive a copy of the impact evaluation of the county to determine impacts, including, but not limited to, an impact evaluation of the downgrade or closure upon the community, including community access to emergency care, and how that downgrade or closure will affect emergency services provided by other entities. Development of the impact evaluation shall incorporate at least one public hearing. The county in which the proposed downgrade or closure will occur shall ensure the completion of the impact evaluation, and shall notify the department of results of an impact evaluation within three days of the completion of that evaluation. The county may designate the local emergency medical services agency as the appropriate agency to conduct the impact evaluation. The impact evaluation and hearing shall be completed within 60 days of the county receiving notification of intent to downgrade or close emergency services. The county or designated local emergency medical services agency shall ensure that all hospital and prehospital health care providers in the geographic area impacted by the service closure or change are consulted with, and local emergency service agencies and planning or zoning authorities are notified, prior to completing an impact evaluation as required in this section. This subdivision shall be implemented on and after the date that the county in which the proposed downgrade or closure will occur, or its designated local emergency medical services agency, has developed a policy specifying the criteria it will consider in conducting an impact evaluation, as required by subdivision (b).

(c) The Emergency Medical Services Authority shall develop guidelines for development of impact evaluation policies. On or before June 30, 1999, each county or its designated local emergency medical services agency shall develop a policy specifying the criteria it will consider in conducting an impact evaluation pursuant to subdivision (b). Each county or its designated local emergency medical services agency shall submit its impact evaluation policy to the department and the Emergency Medical Services Authority within three days of completion of the policy. The Emergency Medical Services Authority shall provide technical assistance upon request to a county or its designated local emergency medical services agency.

SEC. 5. Section 1364.1 is added to the Health and Safety Code, to read:

1364.1. Within 30 days of receiving the notice required by Section 1255.1, a health care service plan shall notify, or provide for the notification of, enrollees who have selected a medical group or independent practice association that uses a hospital that the hospital will reduce or eliminate its emergency services. The plan may require that its contracting medical groups and independent practice associations that use the hospital provide this notice. The notice shall include a list of alternate hospitals that may be used by enrollees for emergency services.

SEC. 6. 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.

CHAPTER 996

An act to amend Sections 22825.5 and 22859.2 of, to add Sections 20530.1, 31470.13, 31691.2, 53213.5, and 75030.7 to, and to add Article 1.5 (commencing with Section 53620) to Chapter 4 of Division 2 of Title 5 of, the Government Code, relating to public employee retirement systems.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 20530.1 is added to the Government Code, to read:

20530.1. An agency whose contract provides for participation of its employees in this system on a prospective basis may request the employees' service, with the contracting agency, prior to the date the employees became members of this system, be credited under this system. If the employees were or are members of a local retirement system and received service and contribution credits under that local retirement system, credit in this system may be granted if the system administrator certifies that the local system may be transferred, and if a two-thirds majority of the affected employees vote in favor of the transfer.

This section shall apply only to members employed by the contracting agency on the effective date of the amendment to the contract in which the contracting agency elects by amendment to its contract to be subject to the provisions of this section. Any cash and securities to the credit of the local retirement system and held on account of affected employees shall be transferred to this system as of said effective date. The board may make arrangements with the agency for the transfer of assets, other than an amount equal to the total member contributions, over an appropriate period following the effective date of the contract, if it finds that transfer as of the effective date is not possible without hardship to the agency.

This section shall not apply to any contracting agency unless and until the agency elects to be subject to the provision of this section by amendment to its contract made in the manner prescribed for approval of contracts.

SEC. 2. Section 22825.5 of the Government Code is amended to read:

22825.5. (a) A contracting agency may amend its contract to provide that subdivision (c) of Section 22825.3 is applicable to employees who retire for service and who are first employed after the operative date of the amendment if the contract is amended to contain the following provisions:

(1) The employer's contribution for each officer, employee, or annuitant shall be based upon the principles prescribed for state officers, employees, or annuitants in Section 22825.1.

(2) The employer has, in the case of employees represented by a bargaining unit, reached an agreement with that bargaining limit to be subject to this section for the period specified in that memorandum of understanding.

(3) The employer certifies to the board, in the case of employees not represented by a bargaining unit, that there is no applicable memorandum of understanding.

(4) The credited service for purposes of determining the percentage of employer contributions applicable under this section shall mean service as defined in Section 20069, except that not less than five years of that service shall be performed entirely with that employer.

(5) The employer agrees to provide the board any information requested necessary to implement this section.

(b) This section shall apply to the Calaveras County Water District, the Alameda County Water District, the City of Fontana, and the City of Lincoln.

(c) On and after January 1, 1999, this section shall also be applicable to all other contracting agencies which have not amended their contracts to be subject to this section.

SEC. 3. Section 22859.2 of the Government Code is amended to read:

22859.2. (a) Notwithstanding any other provision of this part, the Santa Monica Community College District and the Mt. San Antonio Community College District and their respective employees' exclusive representatives and unrepresented employees may agree that the employer contribution payable by the contracting agency for postretirement health benefit coverage shall be subject to the following:

(1) Credited years of service that the employee worked with the contracting agency.

(2) A memorandum of understanding regarding postretirement health benefit coverage mutually agreed to through collective bargaining. This issue shall not be subject to the impasse procedures set forth in Article 9 (commencing with Section 3548) of Chapter 10.7 of Division 4 of Title 1.

(b) No agreement reached pursuant to subdivision (a) shall be valid if it imposes separate postretirement health benefit coverage vesting requirements on employees in the same category and doing similar job duties.

(c) This section shall not be applicable to any employee who has retired before the effective date of the memorandum of understanding agreed to by the contracting agency and the employees' exclusive representative and unrepresented employees. In the event that the memorandum of understanding establishes a

retroactive effective date, this section shall apply only prospectively and any employee who retires before the memorandum of understanding is signed shall not be affected by it.

(d) No agreement reached pursuant to subdivision (a) shall be valid if it provides for employer contributions with respect to employees with less than five years of credited service with the district.

(e) The contracting agency shall provide to the board in the manner prescribed by the board a notification of the agreement established pursuant to this section and any additional information necessary to implement this section.

(f) On and after January 1, 1999, this section shall also apply to all other school employers that have not amended their contracts to be subject to this section.

SEC. 4. Section 31470.13 is added to the Government Code, to read:

31470.13. Officers and employees whose function clearly fall within the scope of hazardous materials services are eligible.

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 31691.2 is added to the Government Code, to read:

31691.2. The board of retirement in a county of the first class may permit active members and their dependents to enroll in any plan authorized in Section 31691. The board shall have exclusive control over the plan benefits and administration to the same degree and to the same extent it otherwise has control over plan benefits and administration for retired members, and may recover reasonable administrative costs from the county or plan participants.

This section shall not be operative until the board of supervisors, by resolution adopted by a majority vote, makes this section applicable in the county.

SEC. 6. Section 53213.5 is added to the Government Code, to read:

53213.5. (a) Each deferred compensation plan established pursuant to this article shall conform with the requirements promulgated under the federal Small Business Job Protection Act of 1996 (Public Law 103-188). Those requirements include, but are not limited to, the holding of assets in a plan that complies with Sections 401(a), 401(k), and 457 of the federal Internal Revenue Code in trust for the exclusive benefit of employees.

(b) Notwithstanding any other provision of law, participants choosing individually directed investments shall relieve the trustee and local agency of responsibility under the terms of the plan and trust. That relief shall be conditioned upon the local agency compliance with communication and education requirements

similar to those prescribed in subdivision (c) of Section 1104 of Title 29 of the United States Code for private sector employers.

SEC. 7. Article 1.5 (commencing with Section 53620) is added to Chapter 4 of Division 2 of Title 5 of the Government Code, to read:

Article 1.5. Health Fund Investments

53620. Notwithstanding Section 53601 or 53635, the governing body of a local agency may invest funds designated for the payment of employee retiree health benefits in any form or type of investment deemed prudent by the governing body pursuant to Section 53622.

53621. The authority of the governing body to invest or to reinvest funds intended for the payment of employee retiree health benefits, or to sell or exchange securities purchased for that purpose, may be delegated by the governing body to designated officers.

53622. (a) Funds intended for the payment of employee retiree health benefits shall only be held for the purpose of providing benefits to participants in the retiree health benefit plan and defraying reasonable expenses of administering that plan.

(b) The governing body or designated officer, when making investments of the funds, shall discharge its duties with respect to the investment of the funds.

(1) Solely in the interest of, and for the exclusive purposes of providing benefits to, participants in the retiree health benefit plan, minimizing employer contributions thereto, and defraying reasonable expenses of administering the plan.

(2) With the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims.

(3) Shall diversify the investments of the funds so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

SEC. 8. Section 75030.7 is added to the Government Code, to read:

75030.7. Any judge has a right to elect, by written election filed with the Judges' Retirement System at any time prior to retirement, to make contributions pursuant to this section for, and receive service credit in this system for all of the time he or she served as a federal judicial officer, excluding any period of time for which the judge is receiving, or is entitled to receive, a retirement allowance from any other public retirement system.

As used in this section, the term "federal judicial officer" means federal justice, federal judge, and federal magistrate judge.

Every judge electing to receive credit for service pursuant to this section shall at the time of filing his or her election, pay into the Judges' Retirement Fund a sum equal to actuarial present value of the increase in benefit due to the additional service. The amount shall

be determined by the Judges' Retirement System in accordance with this section.

CHAPTER 997

An act to amend Sections 25281.5 and 40440.8 of, to add Sections 43830.8 and 116367.5 to, to add and repeal Section 116367 of, to repeal Section 25299.99 of, and to repeal, add, and repeal Article 13 (commencing with Section 25299.99) of Chapter 6.75 of Division 20 of, the Health and Safety Code, relating to pollution, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 25281.5 of the Health and Safety Code is amended to read:

25281.5. (a) Notwithstanding subdivision (*l*) of Section 25281, for purposes of this chapter "pipe" means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

(1) An interstate pipeline subject to 49 Code of Federal Regulations, Part 195.

(2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.

(3) Unburied delivery hoses, vapor recovery hoses, and nozzles which are subject to unobstructed visual inspection for leakage.

(4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (x) of Section 25281, "underground storage tank" does not include either of the following:

(1) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(2) Unburied fuel delivery piping at marinas if the owner or operator conducts daily visual inspections of the piping and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph shall not be applicable if

the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel delivery piping at marinas.

SEC. 2. Article 13 (commencing with Section 25299.99) of Chapter 6.75 of Division 20 of the Health and Safety Code, as added by Section 8 of Chapter 814 of the Statutes of 1997, is repealed.

SEC. 3. Article 13 (commencing with Section 25299.99) of Chapter 6.75 of Division 20 of the Health and Safety Code, as added by Section 2 of Chapter 815 of the Statutes of 1997, is repealed.

SEC. 4. Article 13 (commencing with Section 25299.99) is added to Chapter 6.75 of Division 20 of the Health and Safety Code, to read:

Article 13. Drinking Water Treatment and Research

25299.99. (a) The board may annually expend up to five million dollars ($5,000,000), upon appropriation by the Legislature, from the Underground Storage Tank Cleanup Fund created pursuant to Section 25299.50 for the purposes for which the State Department of Health Services may expend the money in the Drinking Water Treatment and Research Fund set forth in Section 116367 when a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that a release has occurred from an underground storage tank.

(b) This section shall become inoperative on June 30, 1999, and, notwithstanding Section 25299.81, as of January 1, 2000, is repealed, unless a later enacted statute that is enacted before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

25299.99.1. (a) The board shall annually transfer five million dollars ($5,000,000) from the Underground Storage Tank Cleanup Fund, created pursuant to Section 25299.50, to the Drinking Water Treatment and Research Fund created by Section 116367, to be expended for the purposes set forth in Section 116367 if a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(b) This section shall become operative June 30, 1999.

25299.99.2. This article, notwithstanding Section 25299.81, 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. 5. Section 40440.8 of the Health and Safety Code is amended to read:

40440.8. (a) Whenever the south coast district intends to propose the adoption, amendment, or repeal of a rule or regulation that will significantly affect air quality or emissions limitations, the district, to the extent data are available from the district's regional economic model or other sources, shall perform an assessment of the

socioeconomic impacts of the adoption, amendment, or repeal of the rule or regulation.

(b) For the purposes of this section, "socioeconomic impact" means only the following:

(1) The type of industries affected by the rule or regulation.

(2) The impact of the rule or regulation on employment and the economy in the south coast basin attributable to the adoption of the rule or regulation.

(3) The range of probable costs, including costs to industry, of the rule or regulation.

(4) The availability and cost-effectiveness of alternatives to the rule or regulation, as determined pursuant to Section 40922.

(5) The emission reduction potential of the rule or regulation.

(6) The necessity of adopting, amending, or repealing the rule or regulation in order to attain state and federal ambient air standards pursuant to Chapter 10 (commencing with Section 40910).

SEC. 6. Section 43830.8 is added to the Health and Safety Code, to read:

43830.8. (a) The state board may not adopt any regulation that requires the addition of any oxygenate to motor vehicle fuel unless the regulation is subject to multimedia rulemaking.

(b) As used in subdivision (a), "multimedia rulemaking" means rulemaking that is the product of consultation and coordination with other members of the council as is necessary to protect public health and the environment from any significant adverse effects in air, water, or soil from the use of the oxygenate.

SEC. 7. Section 116367 is added to the Health and Safety Code, to read:

116367. (a) The Legislature finds and declares that oxygenated gasoline has contaminated groundwater and surface water used for drinking water purposes. The Legislature further declares that it is in the public interest to provide funding to pay for corrective actions needed to protect public health and the environment as a result of oxygenate contamination of drinking water.

(b) For the purposes of this section, the following terms have the following meanings:

(1) "Drinking water fund" means the Drinking Water Treatment and Research Fund created pursuant to subdivision (c).

(2) "Financial hardship" means a public water system does not have sufficient resources not otherwise dedicated for a specified purpose, including, but not limited to, debt service requirements, to pay for necessary treatment works, conduct an investigation into the source of contamination, or acquire alternate drinking water supplies and leave sufficient reserves available to enable the system owner or operator to address economic uncertainties to pay for contingencies.

(3) "Oxygenate" has the same meaning as oxygenate as defined in Section 25299.97.

(4) "Public water system" means a public water system, as defined in Section 116275.

(c) The Drinking Water Treatment and Research Fund is hereby created in the State Treasury.

(d) The department may expend the money in the drinking water fund for all of the following purposes:

(1) To make payments to a public water system for the incremental costs of treating groundwater and surface water used for drinking water purposes that has been contaminated by an oxygenate if the level of contamination exceeds the lowest of any primary or secondary drinking water standard adopted pursuant to Section 116365 or 116610. Treatment for surface water shall be for surface water that supplies water to a treatment facility for a water supply system that serves domestic uses.

(2) To make payments to a public water system for the costs of investigating the possible source of contamination when an oxygenate is detected at any level in groundwater supplies utilized by a public water system for drinking water purposes. Costs eligible for payment under this paragraph may include the cost of acquiring alternate drinking water supplies if the well is required to be shut down or its use curtailed during the investigation. Costs eligible for payment under this paragraph shall not include any costs incurred by a public water system to pursue cost recovery from responsible persons pursuant to subdivision (f).

(3) To make payments to a public water system for the incremental costs of acquiring alternate drinking water supplies to replace supplies contaminated by an oxygenate at a level that exceeds the lowest of any primary or secondary drinking water standard adopted pursuant to Section 116365 or 116610. Costs eligible for payment under this paragraph include the costs of connecting a public water system to another public water system or constructing a new drinking water well.

(4) To conduct research and develop cost-effective treatment technologies to treat drinking water contaminated by an oxygenate to meet primary or secondary drinking water standards and effective strategies to protect drinking water sources from contamination by oxygenates. The department shall not expend more than one million dollars ($1,000,000) annually for these purposes and may enter into cooperative agreements with federal and state agencies, local agencies, or other persons to conduct research and development activities.

(5) To pay the administrative costs, not to exceed 5 percent, for the department to administer this section.

(e) Notwithstanding Section 7550.5 of the Government Code, the department shall report annually to the Governor and to the Legislature on any money provided to a public water system pursuant to this section.

(f) The department shall be reimbursed by a public water system that has received funds pursuant to this section, to the extent that the public water system receives payment from any source to cover the costs for which it received funding under this section. The public water system shall aggressively pursue cost recovery from responsible persons and, upon recovery, or within five years of the initial payment received, whichever occurs first, shall reimburse the department for funds received pursuant to this section, unless the public water system can demonstrate that, despite all reasonable efforts, recovery from a responsible party is not possible, or that a responsible party cannot be identified. The department shall transfer any reimbursements received from a public water system into the drinking water fund or the Underground Storage Tank Cleanup Fund, whichever provided the funds.

(g) The department may make payments pursuant to paragraphs (1), (2), and (3) of subdivision (d) without regard to when the contamination occurred or when costs for treating or investigating the source of contamination or acquiring replacement water were incurred, except that a public water system may not receive more than three million dollars ($3,000,000) from the drinking water fund in any fiscal year unless the public water system makes a showing of financial hardship.

(h) (1) The department may make payments pursuant to paragraphs (1), (2), and (3) of subdivision (d), without requiring a public water system to first incur expenditures, if the department determines that a situation exists that requires prompt action by the public water system to protect human health or the environment, or the public water system makes a showing of financial hardship.

(2) Upon a showing of financial hardship, pursuant to paragraph (1), the public water system shall present the department with a work plan that specifies the estimated costs of treatment, constructing a new drinking water well, or obtaining an alternate water supply. The estimated costs of treatment or constructing a new well to provide replacement water shall be prepared by a registered civil engineer or other registered professional. The estimated costs for acquiring an alternate water supply, other than a new well, shall be substantiated by an identification of necessary capital facilities to convey the water to the public water system and a written offer by another entity to provide the alternate water supply.

(3) The department shall prescribe forms and procedures for claims filed pursuant to this section as necessary to ascertain eligibility for payment and validity of incremental costs based on generally accepted accounting principles. The department shall not require an applicant to prepare an economic feasibility study regarding the acquisition of an alternate water supply. The department may require a description of site-specific information, including the origin of contamination, the petroleum products released, and the status of cleanup and abatement activities at

potential leaking underground storage tank sites if that information is available to the applicant.

(4) The department shall provide payment within 60 days of receiving a claim filed pursuant to this section.

(5) A claim shall be deemed true and correct if not audited by the department within three years of payment.

(i) The department, in evaluating claims submitted for payment from the drinking water fund, shall consider the findings of the University of California report regarding the assessment undertaken pursuant to Section 3 of Chapter 816 of the Statutes of 1997, as those findings relate to the assessment of the human health and environmental risks and benefits, if any, associated with the use of MTBE in gasoline. In particular, the department shall consider findings in the report regarding the evaluation of the costs and effectiveness of treatment technologies available to remove MTBE from drinking water.

(j) Any funds transferred to the drinking water fund pursuant to Section 25299.99 may be used for the purposes of this section only if a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(k) (1) 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.

(2) The repeal of this section does not terminate any of the following rights, obligations or authorities, or any provision necessary to carry out these rights or obligations:

(A) The filing and payment of claims in the fund, until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(B) The resolution of any cost recovery action.

SEC. 8. Section 116367.5 is added to the Health and Safety Code, to read:

116367.5. The department shall establish a Research Advisory Committee, which shall consist of 11 members. The department shall provide for the support staff and meeting facility needs of the committee. The committee shall meet as necessary to review requests for research projects pursuant to paragraph (4) of subdivision (d) of Section 116367. The committee members shall be appointed by the director and shall consist of the following members:

(a) Four members representing public water systems.

(b) Four members representing entities paying into the Underground Storage Tank Cleanup Trust Fund created pursuant to Section 25299.50.

(c) One member representing environmental interest groups.

(d) One member representing consumer interest groups.

(e) One member representing the department.

SEC. 9. The sum of five million dollars ($5,000,000) is hereby appropriated from the General Fund to the State Department of Health Services for deposit into the Drinking Water Treatment and Research Fund created pursuant to Section 116367 of the Health and Safety Code, and appropriated therefrom, to carry out the purposes set forth in that section.

CHAPTER 998

An act to amend Section 13320 of, to add Chapter 5.9 (commencing with Section 13399.25) to Division 7 of, and to add and repeal Section 13260.2 of, the Water Code, relating to water.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 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) Unregulated storm water runoff is a leading cause of contamination of the state's surface water and groundwater.

(b) Noncompliance with existing federal and state storm water regulations hinders the state's ability to attain its water quality objectives.

(c) It is necessary to establish a state storm water enforcement scheme that ensures fair, predictable, and consistent state enforcement of storm water requirements by the State Water Resources Control Board and the California regional water quality control boards, while ensuring that useful information is available to help protect the environment from the harmful effects of polluted storm water.

SEC. 2. Section 13260.2 is added to the Water Code, to read:

13260.2. (a) The state board shall reduce the annual storm water fee to two hundred fifty dollars ($250) in the 1999 calendar year, and to fifty dollars ($50) thereafter, for facilities described in Code 20XX of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget that are subject to a general industrial storm water permit and that, in the previous year, submitted to the regional board a "no exposure certification" and qualified for a sampling and analyses exemption as described in the general permit.

(b) The state board shall notify the facilities described in subdivision (a) with regard to the adoption of new or modified storm water regulations affecting those facilities.

(c) The state board may submit to the Legislature, on or before January 1, 2002, as part of the five-year review of the general

industrial storm water permit, a report evaluating the fee structure for facilities with "no exposure" certification or exemptions.

(d) This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted on or before January 1, 2003, deletes or extends that date.

SEC. 2.5. Section 13320 of the Water Code is amended to read:

13320. (a) Within 30 days of any action or failure to act by a regional board under subdivision (c) of Section 13225, Article 4 (commencing with Section 13260) of Chapter 4, Chapter 5 (commencing with Section 13300), Chapter 5.5 (commencing with Section 13370), Chapter 5.9 (commencing with Section 13399.25), or Chapter 7 (commencing with Section 13500), any aggrieved person may petition the state board to review that action or failure to act. In case of a failure to act, the 30-day period shall commence upon the refusal of the regional board to act, or 60 days after request has been made to the regional board to act. The state board may, on its own motion, at any time, review the regional board's action or failure to act and also any failure to act under Article 3 (commencing with Section 13240) of Chapter 4.

(b) The evidence before the state board shall consist of the record before the regional board, and any other relevant evidence which, in the judgment of the state board, should be considered to effectuate and implement the policies of this division.

(c) The state board may find that the action of the regional board, or the failure of the regional board to act, was appropriate and proper. Upon finding that the action of the regional board, or the failure of the regional board to act, was inappropriate or improper, the state board may direct that the appropriate action be taken by the regional board, refer the matter to any other state agency having jurisdiction, take the appropriate action itself, or take any combination of those actions. In taking any such action, the state board is vested with all the powers of the regional boards under this division.

(d) If a waste discharge in one region affects the waters in another region and there is any disagreement between the regional boards involved as to the requirements which should be established, either regional board may submit the disagreement to the state board which shall determine the applicable requirements.

(e) If a petition for state board review of a regional board action on waste discharge requirements issued for a solid waste landfill includes a request for a stay of the waste discharge requirements, the state board shall act on the requested stay portion of the petition within 60 days of accepting the petition.

SEC. 3. Chapter 5.9 (commencing with Section 13399.25) is added to Division 7 of the Water Code, to read:

CHAPTER 5.9. THE STORM WATER ENFORCEMENT ACT OF 1998

13399.25. This chapter supplements, and does not supplant, other laws relating to the discharge of storm water.

13399.27. On or before February 1, 2000, and on each February 1 thereafter, the state board, after any necessary investigation, shall prepare, and make available to the public, a report that includes both of the following:

(a) A list of those persons that were notified of their duty to comply with applicable general storm water NPDES permits pursuant to Section 13399.30 and a description of the responses received to those notifications, including the filing of notices of intent to obtain coverage or notices of nonapplicability, returned mail and no response, appeals of filing or permitting requirements pursuant to this chapter, site inspections, enforcement actions taken, and penalties assessed therefor.

(b) A list of those dischargers identified pursuant to Section 13399.31 that, during the previous calendar year, failed to submit an annual report or construction certification required by a regional board, and any penalties assessed therefor.

13399.30 (a) (1) Each year the regional boards shall undertake reasonable efforts to identify dischargers of storm water that have not obtained coverage under an appropriate storm water NPDES permit.

(2) Any person, including a person subject to waste discharge requirements under Section 1342(p) of Title 33 of the United States Code, that discharges, proposes to discharge, or is suspected by a regional board or the state board of discharging storm water associated with industrial activity that has not obtained coverage under an appropriate storm water NPDES permit, shall submit to the regional board, within 30 days from the date on which a notice is sent by the regional board, the appropriate notice of intent to obtain coverage or a notice of nonapplicability that specifies the basis for not needing to obtain coverage under an NPDES permit.

(b) If a person to which a notice is sent pursuant to subdivision (a) fails to submit the appropriate notice of intent to obtain coverage or the required notice of nonapplicability to the regional board within 30 days from the date on which that notice is sent, the executive officer of the regional board shall send a second notice to that discharger.

(c) (1) If a person to which a notice is sent pursuant to subdivision (b) fails to submit the required notice of nonapplicability to the regional board within 60 days from the date on which the notice pursuant to subdivision (a) was sent, the regional board shall impose the penalties described in subdivision (b) of Section 13399.33.

(2) If a person to which a notice is sent pursuant to subdivision (b) fails to submit the required notice of intent to obtain coverage to the regional board within 60 days from the date on which the notice

pursuant to subdivision (a) was sent, the regional board shall impose the penalties described in subdivision (a) of Section 13399.33.

13399.31. (a) Each year the regional board shall conduct a review of the annual reports and construction certifications submitted in accordance with the requirements of an applicable NPDES permit and Section 1342(p) of Title 33 of the United States Code and shall identify the dischargers that have failed to submit that annual report or construction certification required by the regional board.

(b) The regional board shall notify each discharger that is identified pursuant to subdivision (a) with regard to its noncompliance and the penalties therefor.

(c) If a discharger to which a notice is sent pursuant to subdivision (b) fails to submit the annual report or construction certification required by the regional board to the regional board within 30 days from the date on which that notice is sent, the executive officer of the regional board shall send a second notice to that discharger.

(d) If a discharger to which a notice is sent pursuant to subdivision (c) fails to submit the annual report or construction certification required by the regional board to the regional board within 60 days from the date on which the notice is sent pursuant to subdivision (b), the regional board shall impose the penalties described in subdivision (c) of Section 13399.33.

13399.33. Except as provided in Section 13399.35, the regional board shall do all of the following with regard to a discharger that is subject to the requirements prescribed in accordance with Section 1342(p) of Title 33 of the United States Code:

(a) (1) With regard to a discharger of storm water associated with industrial activity that fails to submit the required notice of intent to obtain coverage in accordance with Section 13399.30, impose civil liability administratively in an amount that is not less than five thousand dollars ($5,000) per year of noncompliance or fraction thereof, unless the regional board makes express findings setting forth the reasons for its failure to do so, based on the specific factors required to be considered pursuant to paragraph (2).

(2) In determining the amount of the penalty imposed under this section, the regional board shall consider the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefits or savings resulting from the violation, and other matters as justice may require. These considerations shall be balanced against the need for the regulatory costs of environmental protection to be borne equally by dischargers throughout the state, and the need for predictability of enforcement when making business decisions.

(b) With regard to a person that fails to submit the required notice of nonapplicability in accordance with Section 13399.30, impose civil

liability administratively in the amount of one thousand dollars ($1,000).

(c) With regard to a person that fails to submit an annual report or construction certification in accordance with Section 13399.31, impose civil liability administratively in an amount that is not less than one thousand dollars ($1,000).

(d) Recover from the persons described in subdivisions (a), (b), and (c) the costs incurred by the regional board with regard to those persons.

(e) It is an affirmative defense to the penalties imposed under this section for a person described in subdivision (a) or (b) to prove that he or she did not, in fact, receive the notices required under Section 13399.30 or 13399.31.

13399.35. (a) The regional board may allow a person to reduce the penalties described in subdivisions (a), (b), and (c) of Section 13399.33 by up to 50 percent by undertaking a supplemental environmental project in accordance with the enforcement policy of the state board and any applicable guidance document.

(b) For the purposes of this section, a "supplemental environmental project" means an environmentally beneficial project that a person agrees to undertake, with the approval of the regional board, which would not be undertaken in the absence of an enforcement action under Section 13399.33.

13399.37. (a) The money generated from the imposition of liability and cost recovery pursuant to Section 13399.33 shall be deposited, and separately accounted for, in the Waste Discharge Permit Fund.

(b) The money described in subdivision (a) shall be available, upon appropriation by the Legislature, to the regional boards from which the revenues were generated for the purpose of carrying out storm water programs under this division.

13399.39. On or before May 1, 2000, and on each May 1 thereafter, the state board shall prepare and submit a report to the Legislature summarizing the enforcement actions undertaken in the previous calendar year under this division with regard to storm water discharge and the results of those actions. The report shall include an assessment with regard to the extent of compliance with requirements relating to the discharge of storm water in this state.

13399.41. Notwithstanding any other provision of law, appropriate state agencies, as requested by the executive director of the state board, shall provide the state board with the names, addresses, and standard industrial classifications or types of business facilities that are subject to storm water programs under this division. The information obtained pursuant to this section shall be used by the state board solely to regulate the discharge of storm water associated with industrial activity under this division. The state shall reimburse state agencies for all reasonable expenses incurred in connection with complying with this section.

13399.43. For the purposes of this chapter, "NPDES permit" means a permit issued under the national pollutant discharge elimination system program in accordance with the Clean Water Act (33 U.S.C.A. Sec. 1251 et seq.).

CHAPTER 999

An act to add Section 144.7 to the Labor Code, relating to employment.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 144.7 is added to the Labor Code, to read:

144.7. (a) The board shall, no later than January 15, 1999, adopt an emergency regulation revising the bloodborne pathogen standard currently set forth in Section 5193 of Title 8 of the California Code of Regulations in accordance with subdivision (b). Following adoption of the emergency regulation, the board shall complete the regulation adoption process and shall formally adopt a regulation embodying a bloodborne pathogen standard meeting the requirements of subdivision (b), which regulation shall become operative no later than August 1, 1999. Notwithstanding Section 11346.1 of the Government Code, the emergency regulation adopted pursuant to this subdivision shall remain in effect until the nonemergency regulation becomes operative or until August 1, 1999, whichever first occurs.

(b) The board shall adopt a standard, as described in subdivision (a), to be developed by the Division of Occupational Safety and Health. The standard shall include, but not be limited to, the following:

(1) A revised definition of "engineering controls" that includes sharps prevention technology including, but not limited to, needleless systems and needles with engineered sharps injury protection, which shall be defined in the standard.

(2) A requirement that sharps prevention technology specified in paragraph (1) be included as engineering or work practice controls, except in cases where the employer or other appropriate party can demonstrate circumstances in which the technology does not promote employee or patient safety or interferes with a medical procedure. Those circumstances shall be specified in the standard, and shall include, but not be limited to, circumstances where the technology is medically contraindicated or not more effective than alternative measures used by the employer to prevent exposure incidents.

(3) A requirement that written exposure control plans include an effective procedure for identifying and selecting existing sharps prevention technology of the type specified in paragraph (1).

(4) A requirement that written exposure control plans be updated when necessary to reflect progress in implementing the sharps prevention technology specified in paragraph (1).

(5) A requirement that information concerning exposure incidents be recorded in a sharps injury log, including, but not limited to, the type and brand of device involved in the incident.

(c) The Division of Occupational Safety and Health may consider and propose for adoption by the board additional revisions to the bloodborne pathogen standards to prevent sharps injuries or exposure incidents including, but not limited to, training requirements and measures to increase vaccinations.

(d) The Division of Occupational Safety and Health and the State Department of Health Services shall jointly compile and maintain a list of existing needleless systems and needles with engineered sharps injury protection, which shall be available to assist employers in complying with the requirements of the bloodborne pathogen standard adopted pursuant to this section. The list may be developed from existing sources of information, including, but not limited to, the federal Food and Drug Administration, the federal Centers for Disease Control, the National Institute of Occupational Safety and Health, and the United States Department of Veterans Affairs.

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 1000

An act to add Section 1708.8 to the Civil Code, relating to privacy.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1708.8 is added to the Civil Code, to read:

1708.8. (a) A person is liable for physical invasion of privacy when the defendant knowingly enters onto the land of another without permission or otherwise committed a trespass, in order to physically invade the privacy of the plaintiff with the intent to capture any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity and the physical invasion occurs in a manner that is offensive to a reasonable person.

(b) A person is liable for constructive invasion of privacy when the defendant attempts to capture, in a manner that is offensive to a reasonable person, any type of visual image, sound recording, or other physical impression of the plaintiff engaging in a personal or familial activity under circumstances in which the plaintiff had a reasonable expectation of privacy, through the use of a visual or auditory enhancing device, regardless of whether there is a physical trespass, if this image, sound recording, or other physical impression could not have been achieved without a trespass unless the visual or auditory enhancing device was used.

(c) A person who commits physical invasion of privacy or constructive invasion of privacy, or both, is liable for up to three times the amount of any general and special damages that are proximately caused by the violation of this section. This person may also be liable for punitive damages, subject to proof according to Section 3294. If the plaintiff proves that the invasion of privacy was committed for a commercial purpose, the defendant shall also be subject to disgorgement to the plaintiff of any proceeds or other consideration obtained as a result of the violation of this section.

(d) A person who directs, solicits, actually induces, or actually causes another person, regardless of whether there is an employer-employee relationship, to violate subdivision (a) or (b) or both is liable for any general, special, and consequential damages resulting from each said violation. In addition, the person that directs, solicits, instigates, induces, or otherwise causes another person, regardless of whether there is an employer-employee relationship, to violate this section shall be liable for punitive damages to the extent that an employer would be subject to punitive damages pursuant to subdivision (b) of Section 3294.

(e) Sale, transmission, publication, broadcast, or use of any image or recording of the type, or under the circumstances, described in this section shall not itself constitute a violation of this section, nor shall this section be construed to limit all other rights or remedies of plaintiff in law or equity, including, but not limited to, the publication of private facts.

(f) This section shall not be construed to impair or limit any otherwise lawful activities of law enforcement personnel or employees of governmental agencies or other entities, either public or private who, in the course and scope of their employment, and supported by an articulable suspicion, attempt to capture any type

of visual image, sound recording, or other physical impression of a person during an investigation, surveillance, or monitoring of any conduct to obtain evidence of suspected illegal activity, the suspected violation of any administrative rule or regulation, a suspected fraudulent insurance claim, or any other suspected fraudulent conduct or activity involving a violation of law or pattern of business practices adversely affecting the public health or safety.

(g) In any action pursuant to this section, the court may grant equitable relief, including, but not limited to, an injunction and restraining order against further violations of subdivision (a) or (b).

(h) The rights and remedies provided in this section are cumulative and in addition to any other rights and remedies provided by law.

(i) It is not a defense to a violation of this section that no image, recording, or physical impression was captured or sold.

(j) For the purposes of this section, "for a commercial purpose" means any act done with the expectation of a sale, financial gain, or other consideration. A visual image, sound recording, or other physical impression shall not be found to have been, or intended to have been captured for a commercial purpose unless it is intended to be, or was in fact, sold, published, or transmitted.

(k) For the purposes of this section, "personal and familial activity" includes, but is not limited to, intimate details of the plaintiff's personal life, interactions with the plaintiff's family or significant others, or other aspects of plaintiff's private affairs or concerns. Personal and familial activity does not include illegal or otherwise criminal activity as delineated in subdivision (f). However, "personal and familial activity" shall include the activities of victims of crime in circumstances where either subdivision (a) or (b), or both, would apply.

(*l*) The provisions of this section are severable. If any provision of this section 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.

CHAPTER 1001

An act to amend Sections 1621.5 and 120290 of, and to add Sections 120291 and 120292 to, the Health and Safety Code, relating to human immunodeficiency virus.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1621.5 of the Health and Safety Code is amended to read:

1621.5. (a) It is a felony punishable by imprisonment in the state prison for two, four, or six years, for any person to donate blood, body organs or other tissue, semen to any medical center or semen bank that receives semen for purposes of artificial insemination, or breast milk to any medical center or breast milk bank that receives breast milk for purposes of distribution, whether he or she is a paid or a volunteer donor, who knows that he or she has acquired immune deficiency syndrome, as diagnosed by a physician and surgeon, or who knows that he or she has tested reactive to the etiologic agent of AIDS or to the antibodies to that agent. This section shall not apply to any person who is mentally incompetent or who self-defers his or her blood at a blood bank or plasma center pursuant to subdivision (b) of Section 1603.3 or who donates his or her blood for purposes of an autologous donation.

(b) In a criminal investigation for a violation of this section, no person shall disclose the results of a blood test to detect the etiologic agent of AIDS or antibodies to that agent to any officer, employee, or agent of a state or local agency or department unless the test results are disclosed as otherwise required by law pursuant to any one of the following:

(1) A search warrant issued pursuant to Section 1524 of the Penal Code.

(2) A judicial subpoena or subpoena duces tecum issued and served in compliance with Chapter 2 (commencing with Section 1985) of Title 3 of Part 4 of the Code of Civil Procedure.

(3) An order of a court.

For purposes of this section, "blood" means "human whole blood" and "human whole blood derivatives," as defined for purposes of this chapter and includes "blood components," as defined in subdivision (*l*) of Section 1603.1.

SEC. 2. Section 120290 of the Health and Safety Code is amended to read:

120290. Except as provided in Section 120291 or in the case of the removal of an afflicted person in a manner the least dangerous to the public health, any person afflicted with any contagious, infectious, or communicable disease who willfully exposes himself or herself to another person, and any person who willfully exposes another person afflicted with the disease to someone else, is guilty of a misdemeanor.

SEC. 3. Section 120291 is added to the Health and Safety Code, to read:

120291. (a) Any person who exposes another to the human immunodeficiency virus (HIV) by engaging in unprotected sexual activity when the infected person knows at the time of the unprotected sex that he or she is infected with HIV, has not disclosed

his or her HIV-positive status, and acts with the specific intent to infect the other person with HIV, is guilty of a felony punishable by imprisonment in the state prison for three, five, or eight years. Evidence that the person had knowledge of his or her HIV-positive status, without additional evidence, shall not be sufficient to prove specific intent.

(b) As used in this section, the following definitions shall apply:

(1) "Sexual activity" means insertive vaginal or anal intercourse on the part of an infected male, receptive consensual vaginal intercourse on the part of an infected woman with a male partner, or receptive consensual anal intercourse on the part of an infected man or woman with a male partner.

(2) "Unprotected sexual activity" means sexual activity without the use of a condom.

(c) (1) When alleging a violation of subdivision (a), the prosecuting attorney or grand jury shall substitute a pseudonym for the true name of the victim involved. The actual name and other identifying characteristics of the victim shall be revealed to the court only in camera, and the court shall seal that information from further revelation, except to defense counsel as part of discovery.

(2) All court decisions, orders, petitions, and other documents, including motions and papers filed by the parties, shall be worded so as to protect the name or other identifying characteristics of the victim from public revelation.

(3) Unless the victim requests otherwise, a court in which a violation of this section is filed shall, at the first opportunity, issue an order that the parties, their counsel and other agents, court staff, and all other persons subject to the jurisdiction of the court shall make no public revelation of the name or any other identifying characteristics of the victim.

(4) As used in this subdivision, "identifying characteristics" includes, but is not limited to, name or any part thereof, address or any part thereof, city or unincorporated area of residence, age, marital status, relationship to defendant, and race or ethnic background.

SEC. 4. Section 120292 is added to the Health and Safety Code, to read:

120292. (a) Notwithstanding Chapter 7 (commencing with Section 120975) and Chapter 8 (commencing with Section 121025) of Part 4, identifying information and other records of the diagnosis, prognosis, testing, or treatment of any person relating to the human immunodeficiency virus (HIV) shall be disclosed in a criminal investigation for a violation of Section 120291 if authorized by an order of a court of competent jurisdiction granted after application showing good cause therefor. Any order of the court shall be issued in accordance with the following conditions:

(1) An order shall not be based on the sexual orientation of the defendant.

(2) In deciding whether to issue an order, the court shall weigh the public interest and the need for disclosure against any potential harm to the defendant, including, but not limited to, damage to the physician-patient relationship and to treatment services. Upon the issuance of an order of this nature, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose safeguards determined appropriate by the court against unauthorized disclosure. However, the court shall not order disclosure under this paragraph for any purpose other than a proceeding under this section. Any order for disclosure under this subdivision shall limit disclosure to those who need the information for the proceeding, and shall direct those to whom disclosure is made to make no further disclosure without permission of the court. The court shall grant permission for further disclosure when necessary for a proceeding under this section. Any disclosure in violation of an order issued under this section shall be remedied or punished as provided in Section 120980.

(b) Nothing in this section is intended to compel the testing to determine the HIV status of any victim of an alleged crime or crimes.

(c) Nothing in this section is intended to restrict or eliminate the anonymous AIDS testing programs provided for in Sections 120885 to 120895, inclusive. Identifying characteristics of persons who submit to that testing shall not be ordered disclosed pursuant to this section, nor shall an order be issued authorizing the search of the records of a testing program of that nature.

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 1002

An act to add Section 5071 to, and to repeal Sections 5063, 5065, 5066, 5070, and 5080 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 5063 of the Vehicle Code is repealed.

SEC. 2. Section 5065 of the Vehicle Code is repealed.

SEC. 3. Section 5066 of the Vehicle Code is repealed.

SEC. 4. Section 5070 of the Vehicle Code is repealed.

SEC. 5. Section 5071 is added to the Vehicle Code, to read:

5071. (a) The department, in consultation with the University of California, shall design and make available for issuance pursuant to Section 5060 special interest license plates, depicting a red ribbon that recognizes the impact of acquired immune deficiency syndrome (AIDS) on society, that may be issued in a combination of numbers or letters, or both, as requested by the applicant for the plate. Any person described in Section 5101, upon payment of the additional fee set forth in subdivision (b), may apply for and be issued a set of special interest license plates.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, renewal, retention, or transfer of the special interest license plates authorized pursuant to this section:

(1) For the original issuance of the plates, fifty dollars ($50).

(2) For a renewal of registration of the plates, or the retention of the plates if renewal is not required, forty dollars ($40).

(3) For transfer of the plates to another vehicle, fifteen dollars ($15).

(4) For each substitute replacement plate, thirty-five dollars ($35).

(5) In addition, for the issuance of an environmental license plate, as defined in Section 5103, the additional fees prescribed in Sections 5106 and 5108, which shall be deposited in the Environmental License Plate Fund.

(c) Except as provided in paragraph (5) of subdivision (b), all fees collected under this section shall, after deduction of the department's costs in administering this section, be deposited in the AIDS Research Account, which is hereby created in the General Fund. The funds in the account shall be used, upon appropriation by the Legislature, to fund AIDS research grants awarded by the University of California.

(d) For the purposes of meeting the requirement of subdivision (b) of Section 5060, the University of California may solicit applications for special interest license plates authorized by this section by contracting with a private, nonprofit entity that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

SEC. 6. Section 5080 of the Vehicle Code is repealed.

CHAPTER 1003

An act to amend Section 631.3 of the Code of Civil Procedure, and to repeal Section 27081.5 of the Government Code, relating to jury fees.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 631.3 of the Code of Civil Procedure is amended to read:

631.3. Notwithstanding any other provision of law, when a party to the litigation has deposited jury fees with the judge or clerk and the case is settled or a continuance is granted on motion of the party depositingthe jury fees, none of the deposit shall be refunded if the court finds there has been insufficient time to notify the jurors that the trial would not proceed at the time set. If the jury fees so deposited are not refunded for the reasons herein specified, or if a refund of jury fees deposited with the judge or clerk has not been requested, in writing, by the depositing party within 20 days from the date on which the action is settled, dismissed, or a continuance thereof granted, the fees shall be transmitted to the Controller for deposit into the Trial Court Trust Fund. All jury fees and mileage fees that may accrue by reason of a juror serving on more than one case in the same day shall be transmitted to the Controller for deposit into the Trial Court Trust Fund.

SEC. 2. Section 27081.5 of the Government Code is repealed.

CHAPTER 1004

An act to amend Section 631.3 of the Code of Civil Procedure, and to amend Sections 68070, 68085, 68113, 68502.5, 77009, 77205, 77212, and 77654 of, and to add Sections 77009.1, 77201.2, and 77206.1 to, the Government Code, relating to trial court funding.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 631.3 of the Code of Civil Procedure is amended to read:

631.3. Notwithstanding any other provision of law, when a party to the litigation has deposited jury fees with the judge or clerk and the case is settled or a continuance is granted on motion of the party

depositing the jury fees, none of the deposit shall be refunded if the court finds there has been insufficient time to notify the jurors that the trial would not proceed at the time set. If the jury fees so deposited are not refunded for the reasons herein specified, or if a refund of jury fees deposited with the judge or clerk has not been requested, in writing, by the depositing party within 20 business days from the date on which the action is settled, dismissed, or a continuance thereof granted, the fees shall be transmitted to the Controller for deposit into the Trial Court Trust Fund. All jury fees and mileage fees that may accrue by reason of a juror serving on more than one case in the same day shall be transmitted to the Controller for deposit into the Trial Court Trust Fund.

SEC. 1.5. Section 68070 of the Government Code is amended to read:

68070. (a) Every court may make rules for its own government and the government of its officers not inconsistent with law or with the rules adopted and prescribed by the Judicial Council. These rules shall not:

(1) Impose any tax, charge, or penalty upon any legal proceeding, or for filing any pleading allowed by law.

(2) Give any allowance to any officer for services.

(b) The Judicial Council is encouraged to adopt rules to provide for uniformity in rules and procedures throughout all courts in a county and statewide. The subjects on which uniformity should be sought shall include, but are not limited to, (1) the form of papers, (2) limitations on the filing of papers, (3) rules relating to law and motion, and (4) requirements concerning documents to be filed at or prior to trial.

SEC. 2. 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 herefrom 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 Sections 631.3 and 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) This section applies to all payments required to be made to the Trial Court Trust Fund by any county or city and county pursuant to Section 77201, 77201.1, or 77205.

(f) Notwithstanding any other provision of law, no agency shall take action to change the amounts allocated to any of the above funds.

(g) 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.

(h) 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.

(i) Upon receipt of any delinquent payment required pursuant to this section, 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 this section and Section 24353 shall be paid from the Trial Court Operations Fund for that court.

(j) Penalty amounts calculated pursuant to subdivision (i) 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.

(k) 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.

(*l*) It is the intent of the Legislature that the revenues required to be deposited into the Trial Court Trust Fund be remitted as soon after collection by the courts as possible. Not later than February 1, 1999, the Judicial Council, in consultation with the California State Association of Counties and the California County Auditors Association, shall study and make recommendations to the Legislature on alternative procedures that would improve the collection and remittance of revenues to the Trial Court Trust Fund.

SEC. 3. Section 68113 of the Government Code is amended to read:

68113. (a) The superior and municipal courts in each county shall submit a report to the Judicial Council on progress towards achieving the cost reduction goals associated with the coordination plans and factors impacting the cost of court operations and the collection of revenues. The reports shall be submitted quarterly on or before the first day of the third month following the end of the quarter, except the fourth-quarter report shall be submitted on the first day of the fourth month following the end of the fourth quarter.

(b) For purposes of the reporting requirements of this section, a court or courts in a county may petition the Judicial Council to permit division of the court or courts into smaller administrative units corresponding to the organization of the court or courts under a coordination plan where reporting courtwide would impose an undue burden because of the number of judges or the physical location of the divisions of the court or courts.

(c) On or before March 1 of each year, the Judicial Council shall provide an annual report to the Legislature regarding those counties which have both municipal and superior courts, on their progress in achieving effective and efficient trial court operations, including implementation of coordination as required by law, regarding court revenues and expenditures, and regarding any factors impacting the cost of court operations or the collection of court revenues.

(d) The Judicial Council shall establish a process to assess the effectiveness and efficiency of those trial court systems that have unified pursuant to subdivision (e) of Section 5 of Article VI of the California Constitution.

SEC. 4. Section 68502.5 of the Government Code is amended to read:

68502.5. (a) The Judicial Council shall provide by rule for the appointment of a standing Trial Court Budget Commission and the deadlines for meeting its various responsibilities. The commission's duties and responsibilities shall be limited to those specified in rules of court adopted by the Judicial Council, including, but not limited to, the following:

(1) Receive budget requests from the trial courts. Trial courts shall send to the county board of supervisors a copy of their proposed budgets and any revisions or appeals at the time their budget requests are submitted to the Trial Court Budget Commission, pursuant to this section. The counties may submit timely comments to the commission regarding the contents of the proposed budgets of their respective trial courts. The commission shall consider the counties' comments when determining appropriate budgets for the courts.

(2) Review the trial courts' budget requests and evaluate them against performance criteria established by the Judicial Council by which a court's performance, level of coordination, and efficiency can be measured.

(3) Annually recommend to the Judicial Council for its approval the projected cost in the subsequent fiscal year of court operations as defined in Section 77003 for each trial court. This estimation shall serve as the basis for recommended court budgets, which shall be developed programmatically by court function, as approved by the Judicial Council, for comparison purposes and to delineate the funding responsibilities.

(4) Annually prepare a recommended schedule for the allocation of moneys to individual courts and a recommended overall trial court budget for approval by the Judicial Council and forwarding to the Governor for inclusion in the Governor's proposed State Budget. The recommended schedule shall be based on the performance criteria established pursuant to paragraph (2) and on a minimum standard established by the Judicial Council for the operation and staffing of all trial court operations. This minimum standard shall be modeled on court operations using all reasonable and available measures to

increase court efficiency and coordination. The schedule of allocations shall assure that all trial courts receive funding for the minimum operating and staffing standards before funding operating and staffing requests above the minimum standards, and shall include incentives and rewards for any trial court's implementation of efficiencies and cost saving measures.

(5) Recommend reallocation of funds in accordance with Judicial Council rules during the course of the fiscal year to ensure equal access to the trial courts by the public, to improve trial court operations, and to meet trial court emergencies. Recommended reallocations shall be limited to 15 percent of that portion of any court's annual budget amount funded by the state. Neither the state nor the counties shall have any obligation to replace moneys appropriated for trial courts and reallocated pursuant to this paragraph.

(6) Recommend allocation of funds in the Trial Court Improvement Fund in accordance with Judicial Council rules to ensure equal access to trial courts by the public, to improve trial court operations, and to meet trial court emergencies.

(7) Upon approval of the trial courts' budget by the Legislature, prepare during the course of the fiscal year recommended allocation schedules for payments to the trial courts, consistent with Section 68085, which, upon approval or modification by the Judicial Council, shall be submitted to the Controller's office by the 10th day of the month in which payments are to be made.

(8) Establish rules, pursuant to the authority of the Judicial Council, regarding a court's authority to transfer trial court funding moneys from one functional category to another in order to address needs in any functional category.

(9) At the request of the presiding judge of a trial court, conduct an independent review of the funding level of the court to determine whether it is adequate to enable the court to discharge its statutory and constitutional responsibilities.

(10) From time to time, review the level of fees charged by the courts for various services and prepare recommended adjustments for approval and forwarding to the Legislature by the Judicial Council.

(11) Perform other activities as requested by the Judicial Council.

(b) The Judicial Council may take action on any matter specified in subdivision (a) whether or not the commission has taken any action on that matter. The Judicial Council shall retain the ultimate responsibility to adopt a budget and allocate funding for the trial courts that best assures their ability to carry out their functions, promotes implementation of statewide policies, and promotes the immediate implementation of efficiencies and cost savings measures in court operations, in order to guarantee equal access to the courts.

(c) Members of the commission shall receive no compensation from the state for their services. When called into session, they shall

receive their actual and necessary expenses for travel, board, and lodging, which shall be paid from the funds appropriated for this use. These expenses shall be appropriated in the manner as the Judicial Council directs, and shall be audited by the Controller in accordance with the rules of the State Board of Control.

SEC. 5. Section 77009 of the Government Code is amended to read:

77009. (a) For the purposes of funding trial court operations, each board of supervisors shall establish in the county treasury a Trial Court Operations Fund, which will operate as an agency fund. All funds appropriated in the Budget Act and allocated and reallocated to each court in the county by the Judicial Council shall be deposited into the fund. Accounts shall be established in the Trial Court Operations Fund for each trial court in the county, except that one account may be established for courts which have a unified budget. In a county where court budgets include appropriations for expenditures administered on a countywide basis, including, but not limited to, court security, centralized data-processing and planning and research services, an account for each centralized service shall be established and funded from those appropriations.

(b) The moneys of the Trial Court Operations Fund arising from deposits of funds appropriated in the Budget Act and allocated or reallocated to each court in the county by the Judicial Council shall be payable only for the purposes set forth in Sections 77003 and 77006.5, and for services purchased by the court pursuant to subdivisions (b) and (c) of Section 77212. The presiding judge of each court in a county, or his or her designee, shall authorize and direct expenditures from the fund and the county auditor-controller shall make payments from the funds as directed. Approval of the board of supervisors is not required for expenditure from this fund.

(c) Interest received by a county which is attributable to investment of money required by this section to be deposited in its Trial Court Operations Fund shall be deposited in the fund and shall be used for trial court operations purposes.

(d) In no event shall interest be charged to the Trial Court Operations Fund, except as provided in Section 77009.1.

(e) Reasonable administrative expenses incurred by the county associated with the operation of this fund shall be charged to each court on a pro rata basis in proportion to the total amount allocated to each court in this fund.

(f) A county, or city and county, may bill trial courts within its jurisdiction for costs for services provided by the county, or city and county, as described in Sections 77003 and 77212, including indirect costs as described in paragraph (7) of subdivision (a) of Section 77003 and Section 77212. The costs billed by the county, or the city and the county, pursuant to this subdivision shall not exceed the costs incurred by the county, or the city and the county, of providing similar services to county departments or special districts.

(g) Pursuant to Section 77206, the Controller, at the request of the Legislature or the Judicial Council, may perform financial and fiscal compliance audits of this fund.

(h) The Judicial Council with the concurrence of the Department of Finance and the Controller's office shall establish procedures to implement the provisions of this section and to provide for payment of trial court operations expenses, as described in Sections 77003 and 77006.5, incurred on July 1, 1997, and thereafter.

(i) The Judicial Council shall study alternative methods for the establishment and management of the Trial Court Operations Fund as provided in this section, and shall report its findings and recommendations to the Legislature not later than November 1, 1998.

SEC. 6. Section 77009.1 is added to the Government Code, to read:

77009.1. (a) Notwithstanding any other provision of law, a county or city and county may, pursuant to this section, lend money to the trial courts of that county to help the courts with cash-flow problems or other emergency monetary needs. If a county lends a trial court money pursuant to this section, it may charge interest at the county pooled money investment account rate.

(b) A trial court may seek a loan of funds under this section only after the Judicial Council has given notice of the loan to the Department of Finance and has thereafter approved the loan.

(c) The Judicial Council shall adopt procedures and criteria concerning any loans of funds pursuant to this section and may delegate to the Administrative Director of the Courts the authority to approve the loan.

(d) A trial court budget approved by the Judicial Council shall not be increased as a result of a loan made pursuant to this section.

(e) A county or city and county shall not be compelled or required to provide a loan to the trial courts of that county pursuant to this section.

SEC. 7. Section 77201.2 is added to the Government Code, to read:

77201.2. All moneys required to be paid to the Trial Court Trust Fund pursuant to Sections 77201 and 77201.1 shall be considered delinquent if not received by the dates therein specified, and shall be subject to the penalties set forth in Section 68085.

SEC. 8. 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 and 76000 of, and subdivision (f) of Section 29550 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. 9. Section 77206.1 is added to the Government Code, to read:

77206.1. (a) The presiding judge, or the person designated by the presiding judge to authorize expenditures from the Trial Court Operations Fund, shall approve no claim, and shall authorize no warrant, for any obligation in excess of that authorized therefor in the budget authorized by the Judicial Council.

(b) The Administrative Director of the Courts shall advise the Judicial Council, and the Judicial Council may appoint a person or entity to manage the expenditures from the Trial Court Operations Fund, of any court found to be in violation of this section.

SEC. 10. Section 77212 of the Government Code, as amended by Chapter 406 of the Statutes of 1998, 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 fiscal year 1994–95, the court may seek adjustment of the amount the county is required to submit to the state pursuant 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.

(d) (1) If a trial court desires to receive or continue to receive a specific service from a county or city and county as provided in subdivision (c), and the county or city and county desires to provide or continue to provide that service as provided in subdivision (c), the presiding judge of that court and the county or city and county shall enter into a contract for that service. The contract shall identify the scope of service, method of service delivery, term of agreement,

anticipated service outcomes, and the cost of the service. The court and the county or city and county shall cooperate in developing and implementing the contract.

(2) This subdivision applies to services to be provided in fiscal year 1999–2000 and thereafter.

SEC. 11. 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 September 1, 1998, and submit its plan for the entire review of court facilities by October 1, 1998, to the Judicial Council, Legislature, and Governor.

(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, and shall report those preliminary determinations to the Judicial Council, the Legislature, and the Governor in an interim report on or before July 1, 1999.

(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 second interim report on or before January 1, 2001. 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.

(4) The impact which creating additional judgeships has upon court facility and other justice system facility needs.

(5) The effects which trial court coordination and consolidation have upon court and justice system facilities needs.

(6) Administrative and operational changes which can reduce or mitigate the need for added court or justice system facilities.

(7) Recommendations for specific funding responsibilities among the entities of government including full state responsibility, full county responsibility, or shared responsibility.

(8) A proposed transition plan if responsibility is to be changed.

(9) Recommendations regarding funding sources for court facilities and funding mechanisms to support court facilities.

(e) The 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.

(f) 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.

(g) 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.

CHAPTER 1005

An act to add and repeal Section 2166.5 of the Elections Code, and to add and repeal Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code, relating to public records, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 2166.5 is added to the Elections Code, to read:

2166.5. (a) Any person filing with the county elections official a new affidavit of registration or reregistration may have the information relating to his or her residence address and telephone number appearing on the affidavit, or any list or roster or index prepared therefrom, declared confidential upon presentation of certification that the person is a participant in the Address Confidentiality for Victims of Domestic Violence program pursuant to Chapter 3.1 (commencing with Section 6205) of Division 7 of Title 1 of the Government Code.

(b) Any person granted confidentiality under subdivision (a) shall:

(1) Be considered an absent voter for all subsequent elections or until the county elections official is notified otherwise by the Secretary of State or in writing by the voter. A voter requesting termination of absent voter status thereby consents to placement of his or her residence address and telephone number in the roster of voters.

(2) In addition to the required residence address, provide a valid mailing address to be used in place of the residence address for election, scholarly, or political research, and government purposes. The elections official, in producing any list, roster, or index may, at his or her choice, use the valid mailing address or the word "confidential" or some similar designation in place of the residence address.

(c) No action in negligence may be maintained against any government entity or officer or employee thereof as a result of disclosure of the information that is the subject of this section unless by a showing of gross negligence or willfulness.

(d) Subdivisions (a) and (b) shall not apply to any person granted confidentiality upon receipt by the county elections official of a written notice by the address confidentiality program manager of the withdrawal, invalidation, expiration, or termination of the program participant's certification.

(e) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 2. Chapter 3.1 (commencing with Section 6205) is added to Division 7 of Title 1 of the Government Code, to read:

CHAPTER 3.1. ADDRESS CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE

6205. The Legislature finds that persons attempting to escape from actual or threatened domestic violence frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence, to enable interagency cooperation with the Secretary of State in providing address confidentiality for victims of domestic violence, and to enable state and local agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

6205.5. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(a) "Address" means a residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant under this chapter.

(b) "Domestic violence" means an act as defined in Section 273.5 of the Penal Code.

(c) "Program participant" means a person certified as a program participant under Section 6206.

6206. (a) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person may apply to the Secretary of State to have an address designated by

the Secretary of State serve as the person's address or the address of the minor or incapacitated person. An application shall be completed in person at a community-based victims' assistance program. The application process shall include a requirement that the applicant shall meet with a victims' assistance counselor and receive orientation information about the program. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains all of the following:

(1) Documentation of any of the following:

(A) A police report indicating domestic violence.

(B) A temporary or permanent restraining order.

(C) A stay of three or more nights in a domestic violence shelter facility in the last year.

(2) A sworn statement by the applicant that the applicant has good reason to believe both of the following:

(A) That the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence.

(B) That the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made.

(3) A statement of whether there are any existing court orders involving the applicant for child support, child custody, or child visitation, and whether there are any active court actions involving the applicant for child support, child custody, or child visitation, the name and address of legal counsel of record, and the last known address of the other parent or parents involved in those court orders or court actions.

(4) A designation of the Secretary of State as agent for purposes of service of process and for the purpose of receipt of mail.

(A) Service on the Secretary of State of any summons, writ, notice, demand, or process shall be made by delivering to the address confidentiality program personnel of the Office of the Secretary of State two copies of the summons, writ, notice, demand, or process.

(B) If a summons, writ, notice, demand, or process is served on the Secretary of State, the Secretary of State shall immediately cause a copy to be forwarded to the program participant at the address shown on the records of the address confidentiality program so that the summons, writ, notice, demand, or process is received by the program participant within three days of the Secretary of State's having received it.

(C) The Secretary of State shall keep a record of all summonses, writs, notices, demands, and processes served upon the Secretary of State under this section and shall record the time of that service and the Secretary of State's action.

(D) The office of the Secretary of State and any agent or person employed by the Secretary of State shall be held harmless from any liability in any action brought by any person injured or harmed as a

result of the handling of first-class mail on behalf of program participants.

(5) The mailing address where the applicant can be contacted by the Secretary of State, and the phone number or numbers where the applicant can be called by the Secretary of State.

(6) The address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence.

(7) The signature of the applicant and of any individual or representative of any office designated in writing under Section 6208.5 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(b) Applications shall be filed with the office of the Secretary of State.

(c) Upon filing a properly completed application, the Secretary of State shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State shall by rule establish a renewal procedure.

(d) Upon certification, in any case where there are court orders or court actions identified in paragraph (2) of subdivision (a) of Section 6206, the Secretary of State shall, within 10 days, notify the other parent or parents of the address designated by the Secretary of State for the program participant and the designation of the Secretary of State as agent for purposes of service of process. The notice shall be given by mail, return receipt requested, postage prepaid, to the last known address of the other parent to be notified. A copy shall also be sent to that parent's counsel of record.

(e) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, is guilty of a misdemeanor. A notice shall be printed in bold type and in a conspicuous location on the face of the application informing the applicant of the penalties under this subdivision.

6206.5. (a) If the program participant obtains a name change, he or she loses certification as a program participant.

(b) The Secretary of State may cancel a program participant's certification if there is a change in the residential address from the one listed on the application, unless the program participant provides the Secretary of State with at least seven days' prior notice of the change of address.

(c) The Secretary of State may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(d) The Secretary of State shall cancel certification of a program participant who applies using false information.

(e) Any records or documents pertaining to a program participant shall be retained and held confidential for a period of three years after termination of certification and then destroyed.

6206.7. (a) A program participant may withdraw from program participation by submitting to the address confidentiality program manager written notification of withdrawal and his or her current identification card. Certification shall be terminated on the date of receipt of this notification.

(b) The address confidentiality program manager may terminate a program participant's certification and invalidate his or her authorization card for any of the following reasons:

(1) The program participant's certification term has expired and certification renewal has not been completed.

(2) The address confidentiality program manager has determined that false information was used in the application process or that participation in the program is being used as a subterfuge to avoid detection of illegal or criminal activity or apprehension by law enforcement.

(3) The program participant no longer resides at the residential address listed on the application, and has not provided at least seven days' prior notice in writing of a change in address.

(4) A service of process document or mail forwarded to the program participant by the address confidentiality program manager is returned as nondeliverable.

(5) The program participant obtains a legal name change.

(c) If termination is a result of paragraph (1), (3), (4), or (5) of subdivision (b), the address confidentiality program manager shall send written notification of the intended termination to the program participant. The program participant shall have five business days in which to appeal the termination under procedures developed by the Secretary of State.

(d) The address confidentiality program manager shall notify in writing the county elections official and authorized personnel of the appropriate county clerk's office, county recording office, and department of health of the program participant's certification withdrawal, invalidation, expiration, or termination.

(e) Upon receipt of this termination notification, authorized personnel shall transmit to the address confidentiality program manager all appropriate administrative records pertaining to the program participant and the record transmitting agency is no longer responsible for maintaining the confidentiality of a terminated program participant's record.

(f) Following termination of program participant certification as a result of subdivision (b), the address confidentiality program manager may disclose information contained in the participant's application.

6207. (a) A program participant may request that state and local agencies use the address designated by the Secretary of State as his

or her address. When creating a public record, state and local agencies shall accept the address designated by the Secretary of State as a program participant's substitute address, unless the Secretary of State has determined both of the following:

(1) The agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under this chapter.

(2) This address will be used only for those statutory and administrative purposes and shall not be publicly disseminated.

(b) A program participant may request that state and local agencies use the address designated by the Secretary of State as his or her address. When modifying or maintaining a public record, excluding the record of any birth, fetal death, death, or marriage registered under Division 102 (commencing with Section 102100) of the Health and Safety Code, state and local agencies shall accept the address designated by the Secretary of State as a program participant's substitute address, unless the Secretary of State has determined both of the following:

(1) The agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under this chapter.

(2) This address will be used only for those statutory and administrative purposes and shall not be publicly disseminated.

(c) A program participant may use the address designated by the Secretary of State as his or her work address.

(d) The office of the Secretary of State shall forward all first-class mail and all mail sent by a governmental agency to the appropriate program participants. The office of the Secretary of State shall not handle or forward packages regardless of size or type of mailing.

(e) Notwithstanding subdivision (a), program participants shall comply with the provisions specified in subdivision (d) of Section 1808.21 of the Vehicle Code if requesting suppression of the records maintained by the Department of Motor Vehicles. Program participants shall also comply with all other provisions of the Vehicle Code relating to providing current address information to the department.

6207.5. A program participant who is otherwise qualified to vote may seek to register and vote in a confidential manner pursuant to Section 2166.5 of the Elections Code.

6208. The Secretary of State may not make a program participant's address, other than the address designated by the Secretary of State, available for inspection or copying, except under any of the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency.

(b) If directed by a court order, to a person identified in the order.

(c) If certification has been canceled.

6208.5. The Secretary of State shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to victims of domestic violence to assist persons applying to be program participants. Any assistance and counseling rendered by the office of the Secretary of State or its designees to applicants shall in no way be construed as legal advice.

6209. The Secretary of State may adopt rules to facilitate the administration of this chapter by state and local agencies.

6209.5. If a program participant under this chapter notifies the appropriate county clerk as required under rules adopted by the Secretary of State, the county clerk shall not make available for inspection or copying the name and address of a program participant contained in marriage applications and records filed under this chapter, except under either of the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency.

(b) If directed by a court order, to a person identified in the order.

6209.7. (a) Nothing in this chapter, nor participation in this program, affects custody or visitation orders in effect prior to or during program participation. A program participant who falsifies his or her location in order to unlawfully avoid custody or visitation orders is subject to immediate termination from the program and is guilty of a misdemeanor.

(b) Participation in the program does not constitute evidence of domestic violence for purposes of making custody or visitation orders.

6210. (a) Notwithstanding Section 7550.5, the Secretary of State shall submit to the Legislature, no later than January 10 of each year, a report that includes the total number of applications received for the program established by this chapter. The report shall disclose the number of program participants within each county and shall also describe any allegations of misuse relating to election purposes.

(b) The Secretary of State shall commence accepting applications and other activities under this program on July 1, 1999.

(c) Notwithstanding Section 7550.5, the Secretary of State shall submit to the Legislature by January 1, 2004, a report that includes the total number of pieces of mail forwarded to program participants, the number of program participants during the program's duration, the average length of time a participant remains in the program, and the targeted code changes needed to improve the program's efficiency and cost-effectiveness.

6211. This chapter shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

SEC. 3. The sum of two hundred twenty-seven thousand twenty-three dollars ($227,023) is hereby appropriated from the General Fund to the Secretary of State for the costs of Sections 1 and 2 of this act for the 1998–99 fiscal year.

SEC. 4. 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.

CHAPTER 1006

An act to amend Sections 22717, 22719, 24209, 24210, 24415, and 24417 of, to add Section 24203.5 to, to repeal and add Section 22954 of, and to repeal Section 24414 of, the Education Code, and to add Sections 20837 and 20963.5 to the Government Code, relating to public employers, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) The success of the class size reduction law and the effectiveness of public education generally requires that students be taught by competent, effective, credentialed teachers.

(b) Benefits provided members of the State Teachers' Retirement System are insufficient compared to those of members of the Public Employees Retirement System and other retirement systems, including teachers' retirement systems in other western states.

(c) State Teachers' Retirement System benefits are inadequate to make teaching attractive as a profession, and to encourage the retention of teachers in teaching.

(d) It is the intent of the Legislature to provide benefit improvements to members of the State Teachers' Retirement System

that will provide comparability to those of school members of the Public Employees' Retirement System and encourage qualified people to choose teaching as a career.

(e) It is the intent of the Legislature that the benefit improvements enacted by this act be funded pursuant to the amendments to Section 22955 of the Education Code proposed by Assembly Bill 2804 of the 1997–98 Regular Session unless provided otherwise.

This act shall be known and may be cited as the Ralph Dills Teacher Recruitment and Retention Act of 1998.

SEC. 2. Section 22717 of the Education Code is amended to read:

22717. (a) A member shall be granted credit at service retirement for each day of accumulated and unused leave of absence for illness or injury for which full salary is allowed to which the member was entitled on the member's final day of employment with the employer by which the member was last employed to perform creditable service subject to coverage by the plan.

(b) The amount of service credit to be granted shall be determined by dividing the number of days of accumulated and unused leave of absence for illness or injury by the number of days of service the employer requires the member's class of employees to perform in a school year during the member's final year of creditable service subject to coverage by the plan, which shall not be less than the minimum standard specified in Section 22138.5. In no event shall the divisor be less than 175.

(c) When the member has made application for service retirement under this part, the employer shall certify to the board, within 30 days following the effective date of the member's service retirement, the number of days of accumulated and unused leave of absence for illness or injury that the member was entitled to on the final day of employment. The board may assess a penalty on delinquent reports.

(d) This section shall be applicable to any person who retires on or after January 1, 1999.

SEC. 3. Section 22719 of the Education Code is amended to read:

22719. If the allowance of a retired member is terminated, the employer shall not restore sick leave days for which service credit was granted at retirement.

SEC. 4. Section 22954 of the Education Code is repealed.

SEC. 5. Section 22954 is added to the Education Code, to read:

22954. (a) Notwithstanding Section 13340 of the Government Code, commencing July 1, 1999, a continuous appropriation is hereby annually made from the General Fund to the Controller, pursuant to this section, for transfer to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund. The total amount of the appropriation for each year shall be equal to 2.5 percent of the total of the creditable compensation of the immediately preceding calendar year upon which members' contributions are based for

purposes of funding the supplemental payments authorized by Section 24415.

(b) The board may deduct from the annual appropriation made pursuant to this section an amount necessary for the administrative expenses of Section 24415.

(c) It is the intent of the Legislature in enacting this section to establish the supplemental payments pursuant to Section 24415 as vested benefits pursuant to a contractually enforceable promise to make annual contributions from the General Fund to the Supplemental Benefit Maintenance Account in the Teachers' Retirement Fund in order to provide a continuous annual source of revenue for the purposes of making the supplemental payments under Section 24415.

SEC. 6. Section 24203.5 is added to the Education Code, to read:

24203.5. The percentage of final compensation used to compute the allowance pursuant to Section 24202.5 or 24203 of a member retiring on or after January 1, 1999, who has 30 or more years of credited service, shall be increased by two-tenths of 1 percentage point, provided that the sum of the percentage of final compensation used to compute the allowance in Section 24202.5 or 24203, including any adjustments for retiring before the normal retirement age, and the additional percentage provided by this section does not exceed 2.40 percent.

SEC. 7. Section 24209 of the Education Code is amended to read:

24209. Upon retirement for service following termination of a prior service retirement, the member shall receive a service retirement allowance equal to the sum of both of the following:

(a) An amount equal to the monthly allowance the member was receiving immediately preceding the most recent termination of retirement allowance, exclusive of any amounts payable pursuant to Section 22714 or 22715, increased by the improvement factor that would have been applied to the allowance if the member had not terminated the retirement allowance.

(b) An amount calculated pursuant to Section 24202, 24202.5, 24203, 24203.5, or 24206 on service credited subsequent to the most recent termination of retirement allowance, the member's age at retirement, and final compensation.

SEC. 8. Section 24210 of the Education Code is amended to read:

24210. Upon retirement for service following a prior disability retirement granted pursuant to Chapter 26 (commencing with Section 24100) that was terminated, the member shall receive a service retirement allowance calculated pursuant to Section 24202, 24202.5, 24203, 24203.5, or 24206 and equal to the sum of both of the following:

(a) An amount based on service credit accrued prior to the effective date of the disability retirement, the member's age as of the effective date of the service retirement, and indexed final compensation to the effective date of the service retirement.

(b) An amount based on the service credit accrued after termination of the disability retirement, the member's age as of the effective date of service retirement, and final compensation.

SEC. 9. Section 24414 of the Education Code is repealed.

SEC. 10. Section 24415 of the Education Code is amended to read:

24415. (a) The proceeds of the Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments commencing on September 1, 1990, to retired members, disabled members, and beneficiaries. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as defined in Section 24412, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of retirement and June of the fiscal year preceding the fiscal year of distribution. In any year in which the purchasing power of the allowances of all retired members, disabled members, and beneficiaries equals not less than 75 percent and additional funds remain from the allocation authorized by this section, those funds shall remain in the Supplemental Benefit Maintenance Account for allocation in future years.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The benefits provided by subdivision (b) are not cumulative, not part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The adjustments authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Sections 22140 and 22141.

SEC. 11. Section 24417 of the Education Code is amended to read:

24417. (a) The proceeds of an auxiliary Supplemental Benefit Maintenance Account shall be distributed annually in quarterly supplemental payments, commencing when funds in the Supplemental Benefit Maintenance Account are insufficient to support 75 percent, to retired members, disabled members, and

beneficiaries. The amount available for distribution in any fiscal year shall not exceed the amount necessary to restore purchasing power up to 75 percent of the purchasing power of the initial monthly allowance after the application of all allowance increases authorized by this part, including those specified in Section 24412 and Section 24415.

(b) The net revenues to be distributed shall be allocated among those retired members, disabled members, and beneficiaries whose allowances, after sequentially applying the annual improvement factor as defined in Sections 22140 and 22141, and the annual supplemental payment as defined in Section 24412 and Section 24415, have the lowest purchasing power percentage. The purchasing power calculation for each individual shall be based on the change in the All Urban California Consumer Price Index between June of the calendar year of benefit effective date and June of the fiscal year preceding the fiscal year of distribution.

(c) The allowance increase shall not be applicable to annuities payable from the accumulated annuity deposit contributions or the accumulated tax-sheltered annuity contributions.

(d) The benefits provided by subdivision (b) are not cumulative, nor part of the base allowance, and will be payable only to the extent that funds are available from the Supplemental Benefit Maintenance Account and the auxiliary Supplemental Benefit Maintenance Account. The board shall inform each recipient of the contents of this subdivision.

(e) The distributions authorized by this section are vested only up to the amount payable as a result of the annual appropriation made pursuant to Section 22954 and shall not be included in the base allowance for purposes of calculating the annual improvement defined by Section 22140 and 22141.

SEC. 12. Section 20837 is added to the Government Code, to read:

20837. Each school employer and each contracting agency that is a school district, on account of liability for the benefits provided by Section 20963.5 shall make contributions in addition to those otherwise specified in this chapter in amounts to be fixed and determined by the board.

SEC. 13. Section 20963.5 is added to the Government Code, to read:

20963.5. (a) Notwithstanding any other provision of law, Section 20963 shall not apply to school safety members who were employed on or after July 1, 1980, and who retired prior to January 1, 1999.

(b) Notwithstanding any other provision of law, Section 20963 shall apply to school members who retire on or after January 1, 1999.

SEC. 14. Sections 1 to 11, inclusive, of this act shall only become operative if Assembly Bill 2804 and Assembly Bill 1150 of the 1997–98

Regular Session of the Legislature are also enacted and become operative.

CHAPTER 1007

An act to add Article 3 (commencing with Section 11970) to Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code, relating to public social services, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

I am signing Senate Bill No. 1587 with a reduction.

This bill would require the Department of Alcohol and Drug Programs to establish the Drug Court Partnership Program and assess the cost-effectiveness of drug courts. This bill specifies the criteria to be used in awarding grants to develop and implement the program.

However, this bill includes an appropriation in excess of what is needed to maintain a two percent reserve. Therefore, I am reducing the appropriation contained in this bill by $4,000,000. The revised appropriation shall be $4,000,000.

PETE WILSON, Governor

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

SECTION 1. Article 3 (commencing with Section 11970) is added to Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code, to read:

Article 3. Drug Courts

11970. (a) This article shall be known and may be cited as the Drug Court Partnership Act of 1998.

(b) The Drug Court Partnership shall be administered by the State Department of Alcohol and Drug Programs for the purpose of demonstrating the cost-effectiveness of drug courts operating pursuant to Sections 1000 to 1000.4, inclusive, of the Penal Code, and for any defendant who has entered a plea of guilty and is on active probation. The department shall design and implement the program with the concurrence of the Judicial Council.

(1) This program shall award grants on a competitive basis for four years to counties that develop and implement drug court programs operating pursuant to Sections 1000 to 1000.4, inclusive, of the Penal Code, and for any defendant who has entered a plea of guilty and is on active probation which are likely to provide the greatest public safety benefit and be most effective in reducing state and local costs.

(2) To be eligible for this grant, the county alcohol and drug program administrator and the presiding judge shall submit a

multiagency plan that identifies the resources and strategies for providing an effective drug court program. The department, in collaboration with the Judicial Council, shall establish minimum criteria for evaluating the plans.

(c) The plan shall include, but not be limited to, the following components:

(1) Development of information-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the grantee in achieving its goals.

(2) Identification of outcome measures, which shall include, but not be limited to, the following:

(A) The annual number of misdemeanor and felony convictions of persons participating in the program for a minimum of two years after entry into the program.

(B) The annual number of admissions to county jail and state prison of persons participating in the program for a minimum of two years after entry into the program.

(C) Other outcome measures identified by the department and the Judicial Council that will assist in determining the cost-effectiveness of the program.

(d) The department, in collaboration with the Judicial Council, shall award grants that provide funding for four years, subject to appropriation in the Budget Act. Funding shall be used to supplement, rather than supplant, existing programs.

(1) Grant funds shall be used for programs that are identified in the local plan. Acceptable uses may include, but are not limited to, the following: drug court coordinators, training, drug testing, treatment, transportation, and other costs related to the implementation of the plan.

(2) No grant shall be awarded unless the applicant makes available resources in an amount equal to at least 10 percent of the amount of the grant in years one and two, and 20 percent of the amount of the grant in years three and four.

(e) The department, with concurrence from the Judicial Council, shall establish minimum standards for use of funds in drug courts operating pursuant to Sections 1000 to 1000.4, inclusive, of the Penal Code, and for any defendant who has entered a plea of guilty and is on active probation, funding schedules, and procedures for awarding grants, which shall take into consideration, but not be limited to, all of the following:

(1) The number of participants who will be served in the program.

(2) Demonstrated commitment to exceed the minimum match requirement, such as in-kind contributions from participating agencies.

(3) Demonstrated ability to provide treatment to clients who will be served through the program.

(4) Demonstrated capacity to administer the program.

(5) Demonstrated ability to report outcome measures for program participants and for participants in other comparable drug court programs administered in the county.

(6) Demonstrated commitment to the program of participating local agencies and the court.

(7) Demonstrated commitment by the drug court to meet the standard of judicial administration.

(f) The department, in collaboration with the Judicial Council, shall create an evaluation design for the Drug Court Partnership that will assess the effectiveness of the program. The department, together with the Judicial Council, shall develop an interim report to be submitted to the Legislature on or before March 1, 2000, and a final analysis of the grant program in a report to be submitted to the Legislature on or before March 1, 2002.

SEC. 2. (a) The sum of eight million dollars ($8,000,000) is hereby appropriated from the General Fund to the State Department of Alcohol and Drug Programs to be expended for the purposes of the Drug Court Partnership Act of 1998 as set forth in Article 3 (commencing with Section 11970) of Chapter 2 of Part 3 of Division 10.5 of the Health and Safety Code.

(b) Up to 5 percent of the amount appropriated by subdivision (a) is available to the State Department of Alcohol and Drug Programs to administer the program, including technical assistance to counties and the development of an evaluation component.

SEC. 3. For the purpose of funding the Drug Court Partnership Act, it is the intent of the Legislature that eight million dollars ($8,000,000) shall be appropriated in the Budget Act in each of the following three fiscal years: 1999–2000, 2000–2001, and 2001–2002.

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

In order for funding to be available for implementation of the Drug Court Partnership Act of 1998 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 1008

An act to amend Sections 44501, 44506, 44507, 44508, 44533, 44535, 44537.5, 44548, and 44559 of the Health and Safety Code, relating to pollution control.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 44501 of the Health and Safety Code is amended to read:

44501. (a) The Legislature hereby finds that it is necessary and essential that the state, in cooperation with the federal government, use all practical means and measures to control, remediate, and eliminate pollution hazards to the environment. The Legislature further finds and determines that industry within this state utilizes processes and facilities that have significant environmental impact. These processes and facilities shall be modified and supplemented to meet the quality standards established and to be established for the control and remediation of environmental pollution. Industry needs and requires new methods to finance the capital outlays required for the devices, equipment, and facilities utilized in pollution control if they are to rapidly comply with the quality standards established by the state and federal governments, and if they are to rapidly remediate contaminated properties so that those properties can be reused for economically beneficial purposes.

(b) The Legislature also finds and declares that the disposal of waste products by such current methods as incineration and landfill pollute the environment by degrading air and water quality. The Legislature further finds that in order to reduce the environmental pollution that currently occurs in connection with the disposal of waste products, there is a need to develop new and alternative processes and facilities that provide for the disposal of those waste products in ways that prevent or reduce environmental degradation. The Legislature also finds that such new and alternative processes and facilities include those that recover resources and energy from waste products. The Legislature further finds and declares that in order to prevent further environmental degradation resulting from contamination caused by the release of waste products and hazardous materials, there is a need to encourage the remediation of that contamination of properties with the potential for economically beneficial reuse.

(c) The alternate method of financing provided in this division is in the public interest and serves a public purpose and will promote the health, welfare, and safety of the citizens of the State of California.

SEC. 2. Section 44506 of the Health and Safety Code is amended to read:

44506. "Participating party" means any person, company, corporation, partnership, firm, or other entity or group of entities engaged in operations within this state that requires financing pursuant to the terms of this division to aid and assist in the control, remediation, or elimination of pollution of the environment of the state.

SEC. 3. Section 44507 of the Health and Safety Code is amended to read:

44507. "Pollution" means an alteration of the quality of the environment of the state and shall be determined by the various standards prescribed from time to time by this state, the federal government, or any agency, department, or political subdivision of this state or the federal government, and may include, but is not limited to, earth, air, or water pollution, pollution caused by solid or hazardous waste disposal, thermal pollution, radiation contamination, the release of hazardous materials, or noise pollution. Pollution also means the contamination of soil or groundwater resulting from the release of hazardous materials, as defined in Section 25260, at sites with a reasonable potential for economically beneficial reuse.

SEC. 4. Section 44508 of the Health and Safety Code is amended to read:

44508. "Project" and "pollution control facility," respectively, mean any land, building, improvement thereto, work, property or structure, real or personal, providing or designed to provide for the control, reduction, abatement, elimination, remediation, or prevention of pollution, including, but not limited to, hydrostatic control facilities, dust collectors, smoke bags, settling ponds, filtration plants, sewage disposal facilities, garbage disposal facilities, recycling facilities, dumps, filling grounds, chlorination ponds, treatment works, water utility property, soil excavation and removal, construction, operation, and maintenance of systems that extract, contain, or treat groundwater, soil vapor, gas, or leachate, and all other structures, systems, or facilities now or hereafter developed or useful in the control of pollution of any type or character, including any structure, equipment, or other facilities for the purpose of the purchase, production, distribution, or sale of water, or of reducing, treating, neutralizing, or cooling the temperature of any liquid, gaseous, or solid or hazardous waste substance or discharge resulting from the process of manufacture, industry, or commerce, or from the development, processing, or recovery of any natural resource or the generation of electricity, steam heat, or manufactured gas, together with the recovery, treatment, neutralizing, stabilizing, or cooling equipment, facilities, plants, or structures necessary to reduce, control, remediate, or eliminate pollution, and any and all facilities which may hereafter be developed through science, study, and investigation to aid and assist in the control of pollution or the removal or treatment of any substance that might otherwise cause or contribute to pollution, and including the use of renewable energy resource devices or the development of an energy conservation program where that action is designed to reduce onsite emissions or pollutants.

SEC. 5. Section 44533 of the Health and Safety Code is amended to read:

44533. (a) No project, or portion thereof, shall be eligible for financing under this division for which, at the time an application is submitted to the authority, financing has been otherwise obtained.

(b) No project relating to the improvement of air or water quality or solid waste control or related to the remediation of property contaminated by a release of hazardous materials shall be eligible for financing under this division unless, prior to the issuance of bonds or notes, a local, regional, state, or federal environmental authority exercising jurisdiction over the project certifies that the project, as designed, will further compliance with federal, state, or local pollution control standards and requirements. Within 60 days of the receipt of a written request for that certification by either the authority or a participating party, the local, regional, state, or federal authority shall issue a written certificate to that effect if, in fact, the project as designed, is in furtherance of those purposes. The certification requirements of this subdivision may be waived by the authority, at the request of the participating party, if that certification is not necessary to qualify the bonds or notes for tax-exempt status under federal laws and regulations.

(c) No certification issued pursuant to subdivision (b) shall be admissible in evidence, constitute an admission, or bind any certifying authority in any proceeding in which the compliance of a participating party's facilities with any applicable pollution control, land use, zoning, or other similar law is an issue or in any application or proceeding for a permit to locate or construct facilities.

SEC. 6. Section 44535 of the Health and Safety Code is amended to read:

44535. (a) The authority may separately approve financing for projects, the purpose of which is to prevent, remediate, or reduce environmental pollution resulting from the disposal of solid, hazardous, or liquid waste.

(b) The following projects shall be considered for financing:

(1) Projects utilizing recognized resource recovery or energy conversion processes.

(2) Projects utilizing new technologies or processes for resource recovery or energy conversion.

(3) Projects utilizing technologies designed to reduce the level of pollutants found in water.

(4) Recycled water facilities.

(5) Water main replacements.

(6) Water filtration facilities.

(7) Projects for the disposal of agricultural wastes.

(8) Soil excavation and removal, and construction, operation, and maintenance of systems that extract, contain, or treat groundwater, soil vapor, gas, or leachate.

(9) Other projects for the reduction or remediation of environmental pollution resulting from the disposal of solid, hazardous, or liquid waste.

(c) The projects specified in subdivision (b) may include elements that provide for new refuse removal vehicles, transfer stations, resource recovery or energy conversion plants, source separation, or any solid or liquid waste disposal facilities involved in resource recovery systems. "Solid, hazardous, or liquid waste disposal facilities" means any property, or portion thereof, used for the collection, storage, treatment, utilization, processing, or final disposal of solid, hazardous, or liquid waste in resource recovery systems.

SEC. 7. Section 44537.5 of the Health and Safety Code is amended to read:

44537.5. The authority shall provide the maximum opportunity for the use of the authority's financing by individuals, businesses engaged in agricultural operations, and small businesses or corporations by providing information, assistance, and coordination to facilitate financing for small projects and other financing that benefits the environment, including financing for projects for the disposal of agricultural wastes, with special attention to the needs of businesses that do not meet standard commercial lending requirements but provide public benefits, such as job creation or retention and the redevelopment for economically beneficial uses of contaminated properties.

SEC. 8. Section 44548 of the Health and Safety Code is amended to read:

44548. (a) Subject to any prior contractual obligations to any of its bondholders, the authority may establish one or more small business assistance funds in order to assist small businesses to achieve financing of pollution control facilities or, to strengthen environmental compliance, or to remediate contamination at properties with a reasonable potential for economically beneficial reuse by funding a capital access program for small businesses pursuant to Article 8 (commencing with Section 44559). For the purpose of establishing and maintaining small business assistance funds as it determines to be necessary or desirable to secure its bonds or any issuance thereof or for other authorized purposes, the authority, pursuant to its contracts with participating parties, may levy fees or other charges on, or require deposits from, participating parties receiving financing for a project under this division. The total amount of these fees, charges, and deposits with respect to a single issue of bonds shall not exceed 3 percent of the principal amount of that issue of bonds. Prior to levying any fees or charges or requiring deposits, the authority shall adopt regulations for the operation of the small business assistance funds, the amounts and any payment schedule for the fees, charges, or deposits, eligibility standards for small businesses desiring to use or benefit from the small business assistance funds, and any other matters the authority determines to be necessary for the establishment and maintenance of small business assistance funds. The regulations may provide for differential fees from participating parties based upon the size of a project financed

by the authority or other factors determined to be relevant by the authority, and the regulations may restrict any benefits to those eligible small businesses specified in the regulations. The authority may transfer any funds available to it or set aside for its administrative expenses to any small business assistance fund established under this section.

(b) The forms of financial assistance that the authority may provide under this section include, but are not limited to, payments to reduce, but not eliminate, the interest rate on loans; payments of part or all of the cost of acquiring letters of credit, insurance, guarantees, or other forms of credit support; and payment of part or all of the authority's expenses in issuing revenue bonds or providing other assistance. The authority may also pledge any small business assistance fund, on an individual or pooled basis, to repay, directly or indirectly, the principal of, or interest or premium on, any issue of bonds of the authority or any loan made or acquired pursuant to this section. In addition to other purposes set forth in this section, the authority may use moneys in a small business assistance fund to make or acquire loans or guarantee commercial loans to participating parties eligible for assistance from those funds. Any moneys repaid or returned to the authority in connection with or as a result of any loan or financial assistance made pursuant to this section shall be deposited in the small business assistance fund from which the loan or assistance was originally provided. The authority may contract with qualified financial institutions, including, but not limited to, banks, investment and mortgage bankers, insurance companies, sureties, and guarantors, to provide any necessary assistance in the granting of credit for these purposes.

(c) Each small business assistance fund established pursuant to this section shall be deposited in a special account which the Controller shall create. Notwithstanding any other provision of law, and subject to any requirements of federal tax law or regulations relative to maintaining the tax-exempt status of the obligations of the authority, all interest or other gains earned by investment or deposit of money in the special account pursuant to any provision of Part 2 (commencing with Section 16300) of Division 4 of Title 2 of the Government Code or pursuant to any other provision of law shall be credited to, and deposited in, the account.

(d) In carrying out this section, the authority shall participate with the air pollution control districts and air quality management districts in providing financial assistance in its lending programs.

SEC. 9. Section 44559 of the Health and Safety Code is amended to read:

44559. (a) The Legislature finds and declares that small businesses engaged in manufacturing or other operations are responsible for a significant amount of environmental emissions in the state, but are less able than larger businesses to afford the investment in new equipment or process modifications needed to

comply with environmental regulations, with regard to controlling emissions, preventing the creation of pollutants, contaminants, or waste products, and remediating contamination of properties with a reasonable potential for economically beneficial reuse. Additionally, small businesses faced with financial pressures will be likely to reduce expenditures to achieve environmental compliance. Better access to capital will allow small businesses to more easily comply with environmental mandates, and to remediate contamination of properties with a reasonable potential or economically beneficial reuse, to the benefit of all the residents of the state.

(b) The Legislature also finds and declares that it is in the best interest of the state to expand the Capital Access Loan Program for small business. Small businesses have difficulty gaining access to capital for startup and expansion purposes. Small businesses owned by minorities and women have special capital access difficulties. In addition, small businesses operating in areas affected by military base closures are disadvantaged by limited access to capital. The Legislature finds that improving access to capital for these small businesses will spur investment, create jobs, expand economic opportunities, assist in the recovery of communities affected by defense and aerospace losses, assist in the recovery of neighborhoods and communities affected by contaminated properties that are not being used for economically beneficial purposes but which could be so used if the contamination was remediated, and help sustain and strengthen economic recovery in California.

SEC. 10. (a) The Legislature finds and declares as follows:

(1) Real property contaminated with hazardous substances is a continuing blight on communities and the cleanup and development of these sites will lead to productive end uses, including creating jobs and providing a community tax base.

(2) The California Pollution Control Financing Authority should assist with the development of financing vehicles for the cleanup and development of contaminated real property.

(3) The authority should assist in determining the most efficient and effective way of using its financial abilities to clean up contaminated real property.

(4) It is within the power of the authority to coordinate with private sector lending institutions to issue bonds and loans for the assessment, cleanup, and development of contaminated real property, recognizing that these activities are being performed only on a limited basis, or, under certain circumstances, not at all.

(b) In order to assist with the use of its financing powers to remediate contaminated real property, including assessment, cleanup and development, notwithstanding Section 7550.5 of the Government Code, the authority shall prepare and submit to the Legislature, on or before July 1, 1999, an analysis that shall include, but not be limited to, all of the following:

(1) An assessment of the most efficient and effective ways to assist prospective purchasers of property or property owners in obtaining the necessary financing to ensure proper cleanup.

(2) The willingness or reluctance of the private sector to issue loans for contaminated real property projects.

(3) Factors that are barriers to financing incentives that would be required.

CHAPTER 1009

An act to amend Section 14016.5 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 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) (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.

CHAPTER 1010

An act to amend Section 4104 of, and to add Section 4104.5 to, the Public Contract Code, relating to public works.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 4104 of the Public Contract Code is amended to read:

4104. Any officer, department, board or commission taking bids for the construction of any public work or improvement shall provide in the specifications prepared for the work or improvement or in the

general conditions under which bids will be received for the doing of the work incident to the public work or improvement that any person making a bid or offer to perform the work, shall, in his or her bid or offer, set forth:

(a) (1) The name and the location of the place of business of each subcontractor who will perform work or labor or render service to the prime contractor in or about the construction of the work or improvement, or a subcontractor licensed by the State of California who, under subcontract to the prime contractor, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in the plans and specifications, in an amount in excess of one-half of 1 percent of the prime contractor's total bid or, in the case of bids or offers for the construction of streets or highways, including bridges, in excess of one-half of 1 percent of the prime contractor's total bid or ten thousand dollars ($10,000), whichever is greater.

(2) (A) Subject to subparagraph (B), any information requested by the officer, department, board, or commission concerning any subcontractor who the prime contractor is required to list under this subdivision, other than the subcontractor's name and location of business, may be submitted by the prime contractor up to 24 hours after the deadline established by the officer, department, board, or commission for receipt of bids by prime contractors.

(B) A state or local agency may implement subparagraph (A) at its option.

(b) The portion of the work that will be done by each subcontractor under this act. The prime contractor shall list only one subcontractor for each portion as is defined by the prime contractor in his or her bid.

SEC. 2. Section 4104.5 is added to the Public Contract Code, to read:

4104.5. (a) The officer, department, board, or commission taking bids for construction of any public work or improvement shall set forth in the bid invitation a date and time for closing of submission of bids by prime contractors. The date and time shall be extended by no less than 72 hours in the event the officer, department, board, or commission issues any material changes, additions, or deletions to the invitation later than 72 hours prior to the bid closing.

(b) As used in this section, the term "material change" means a change with a substantial cost impact on the total bid as determined by the awarding agency.

(c) As used in this section, the term "bid invitation" shall include any documents issued to prime contractors that contain descriptions of the work to be bid or the content, form, or manner of submission of bids by bidders.

CHAPTER 1011

An act to add and repeal Section 125001 of the Health and Safety Code, relating to health, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 125001 is added to the Health and Safety Code, to read:

125001. (a) The Legislature finds and declares all of the following:

(1) California requires testing at birth for certain genetic diseases or conditions.

(2) Technology called tandem mass spectography is now available that would permit testing for many more genetic diseases or conditions.

(3) Many of the additional tests can be made from the same blood sample at costs of between eighteen dollars ($18) and twenty dollars ($20).

(4) It is the intent of the Legislature that a program for testing services and training be initiated as expeditiously as possible utilizing laboratory services experienced in tandem mass spectography.

(b) The department shall establish a program for genetic disease testing, and may provide laboratory testing facilities or contract with any laboratory that it deems qualified to conduct testing or provide necessary treatment with qualified specialists. The program shall provide extended newborn genetic screening services under the Hereditary Disorders Act for persons who elect to have, and pay, for the additional screening.

(c) The department shall charge a fee for the additional screening not to exceed the costs of the additional screening. Any fees collected to support the program shall be deposited in the Genetic Disease Testing Fund.

(d) The additional genetic conditions for which testing may be provided under this program may include, but need not be limited to, any of the following:

(1) Adenosine deaminase deficiency.
(2) Arginase deficiency.
(3) Biotinidase deficiency.
(4) Congenital adrenal hyperplasia.
(5) Cystic fibrosis.
(6) Duchenne-Becker muscular dystrophy.
(7) Glucose-6-phosphate dehydrogenase.
(8) Homocystinuria.
(9) Maple Syrup Urine Disease.

(10) Acute neonatal citrullinemia.
(11) Pyroglutamic aciduria.
(12) Medium chain ACYL-COA dehydrogenase and other fatty acid oxidation disorders.
(13) Methylmalonic acidemias.
(14) Propionic acidemia.
(15) Isovaleric acidemia.
(16) Glutaric acidemia, type I and type II, and other organic acid disorders.

(e) The department shall report to the Legislature regarding the progress of the program by June 30, 2000. The report shall include the costs for screening, followup, and treatment, as compared to the costs and morbidity averted for each condition tested for in the program.

(f) 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.

SEC. 2. (a) (1) In order to support the cost of the program provided for in Section 125001 of the Health and Safety Code, as contained in Section 1 of this act, the sum of one million dollars ($1,000,000) is hereby authorized for the fiscal year 1998–99 to be expended by the State Department of Health Services from the unencumbered reserves of the Genetic Disease Testing Fund, which shall cover the cost of equipment, personnel, consultant contracts, and out-of-state travel related to conducting the program.

(2) The expenditure of moneys from this fund for these purposes shall not be subject to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The State Department of Health Services shall provide the Department of Finance with documentation justifying that equipment and services have been obtained at the lowest cost and consistent with technical requirements for a comprehensive high-quality program.

(b) It is the intent of the Legislature that, for subsequent fiscal years, authorization be provided for the use of moneys from the Genetic Disease Testing Fund to cover the cost of the program provided for in Section 125001 of the Health and Safety Code, as contained in Section 1 of this act.

SEC. 3. The Legislature finds and declares that timely implementation of the program provided for in Section 125001 of the Health and Safety Code, as contained in Section 1 of this act, requires expeditious regulatory and administrative procedures to obtain the most cost-effective testing equipment and testing services contracts.

CHAPTER 1012

An act to amend Sections 7113.5 and 7114 of, and to add Sections 7117 and 7118 to, the Government Code, and to amend Sections

17053.45, 17053.46, 17268, 23645, 23646, and 24356.8 of the Revenue and Taxation Code, relating to local agencies.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 7113.5 of the Government Code is amended to read:

7113.5. When selecting successful applicants for a local agency military base recovery area, the agency shall limit the number of local agency military base recovery areas to eight, which shall be awarded by the following criteria, in addition to the criteria set forth in Section 7111.

(a) The agency shall designate at least one local agency military base recovery area in each region.

(b) If the agency finds that none of the applications in a competition are satisfactory in meeting the selection criteria, the agency shall inform all applicants on the deficiencies in their application and shall reopen competition for a period not to exceed six months. Local governing bodies who originally applied, may reapply in the new competition.

(c) If, after following the procedures specified in (c), the agency determines that there are no applications that are satisfactory, the agency may not designate a local agency military base recovery area.

(d) Eligible bases shall compete for approval of a local agency military base recovery area against other eligible bases. In any event, not less than one area shall be designated from each region.

SEC. 2. Section 7114 of the Government Code is amended to read:

7114. (a) The agency shall design, develop, and make available the applications and the criteria for selection of a local agency military base recovery area, and shall adopt all regulations necessary to carry out this chapter.

(b) The applications, selection criteria, and all necessary regulations for designation shall be adopted by the agency and made available not later than 120 days following the effective date of this chapter.

(c) The agency shall adopt regulations concerning the designation procedures and application process as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. For the purpose of that chapter, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare, notwithstanding subdivision (f) of Section 11346.1. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall not remain in effect more than 180 days unless

the agency complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 as required by subdivision (e) of Section 11346.1.

SEC. 3. Section 7117 is added to the Government Code, to read:

7117. Notwithstanding any other provision of law, the Office of Small Business shall establish regulations for loans and loan guarantees administered by the office that give high priority to businesses in a local agency military base recovery area.

SEC. 4. Section 7118 is added to the Government Code, to read:

7118. (a) Whenever the state prepares an invitation for bid for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies who certify under penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a local agency military base recovery area.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in a local agency military base recovery area.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 20 or more percent of its work force during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred

thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

(2) Prior to the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section, a local agency military base recovery area shall also mean any local agency military base recovery area previously authorized under any other provision of state law.

SEC. 5. 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, 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 property that is each of the following:

(A) Purchased by the taxpayer for exclusive use in a trade or business conducted within a LAMBRA.

(B) Purchased before the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(C) Any of the following:

(i) High technology equipment, including, but not limited to, computers and electronic processing equipment.

(ii) Aircraft maintenance equipment, including, but not limited to, engine stands, hydraulic mules, power carts, test equipment, handtools, aircraft start carts, and tugs.

(iii) Aircraft components, including, but not limited to, engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires.

(iv) 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.

SEC. 6. 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, 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.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However, wages paid or incurred with respect to qualified disadvantaged individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section applied as if the LAMBRA 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) "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) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(II) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of such a closure or layoff.

(III) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(IV) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(V) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(VI) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) Has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act.

(v) An individual who is enrolled in or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(vi) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(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.

(7) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(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.

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, a taxpayer may elect to treat 40 percent of 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 the taxpayer places the Section 17268 property 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 each of the following:

(A) Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code).

(B) Purchased by the taxpayer for exclusive use in a trade or business conducted within a LAMBRA.

(C) Purchased before the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(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 aggregate cost of all Section 17268 property that may be taken into account under subdivision (a) for any taxable year shall not exceed the following applicable amounts for the taxable year of the designation of the relevant LAMBRA and taxable years thereafter:

	The applicable amount is:
Taxable year of designation	$100,000
1st taxable year thereafter	100,000
2nd taxable year thereafter	75,000
3rd taxable year thereafter	75,000
Each taxable year thereafter	50,000

(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 23645 of the Revenue and Taxation Code is amended to read:

23645. (a) For each income year beginning on or after January 1, 1995, there shall be allowed as a credit against the "tax" (as defined by Section 23036) for the income year 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 twenty million dollars ($20,000,000).

(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 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.

(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 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. 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 that are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the LAMBRA during the income 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 income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(3) "Qualified property" means property that is each of the following:

(A) Purchased by the taxpayer for exclusive use in a trade or business conducted within a LAMBRA.

(B) Purchased before the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(C) Any of the following:

(i) High technology equipment, including, but not limited to, computers and electronic processing equipment.

(ii) Aircraft maintenance equipment, including, but not limited to, engine stands, hydraulic mules, power carts, test equipment, handtools, aircraft start carts, and tugs.

(iii) Aircraft components, including, but not limited to, engines, fuel control units, hydraulic pumps, avionics, starts, wheels, and tires.

(iv) Section 1245 property, as defined in Section 1245(a)(3) of the Internal Revenue Code.

(c) The credit provided under subdivision (a) shall only be allowed 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 "tax" for the income year, that portion of the credit which 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.

(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 the credit otherwise allowed under this section and Section 23646, including any credit carryovers from prior years, that may reduce the "tax" for the income 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 attributable 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 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 income years, as if it were an amount exceeding the "tax" for the income 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 income 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 tax for the taxpayer's second income 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.

SEC. 9. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each income year beginning on or after January 1, 1995, there shall be allowed as a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the income 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 income 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 income year.

(C) Wages received during the 60-month period beginning with the day the individual commences employment with the taxpayer.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However, wages paid or incurred with respect to qualified disadvantaged individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section applied as if the LAMBRA 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) "LAMBRA" means a local agency military base recovery area designated in accordance with the provisions of 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 income 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 income 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 provided for 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) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(II) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial

layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of such a closure or layoff.

(III) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(IV) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(V) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(VI) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) Has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act.

(v) An individual who is enrolled in or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(vi) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(5) "Qualified 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 as determined below 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 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. 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 qualified taxpayer that first commences doing business in the LAMBRA during the income 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 income 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 that 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 income 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 income 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.

(7) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(c) (1) For purposes of this section, both 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 employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that both of the following apply:

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) 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 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 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 unemployment 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 either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) 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 income 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 tax for the taxpayer's second income year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(f) 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 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 "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.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the "tax" for the income 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 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), 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 income years, as if it were an amount exceeding the "tax" for the income 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. 10. Section 24356.8 of the Revenue and Taxation Code is amended to read:

24356.8. (a) For each income year beginning on or after January 1, 1995, a taxpayer may elect to treat 40 percent of the cost of any Section 24356.8 property as an expense that is not chargeable to the capital account. Any cost so treated shall be allowed as a deduction for the income year in which the taxpayer places the Section 24356.8 property in service.

(b) (1) An election under this section for any income year shall meet both of the following requirements:

(A) Specify the items of Section 24356.8 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 income 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.

(c) (1) For purposes of this section, "Section 24356.8 property" means any recovery property that is:

(A) Section 1245 property (as defined in Section 1245(a)(3) of the Internal Revenue Code).

(B) Purchased by the taxpayer for exclusive use in a trade or business conducted within a LAMBRA.

(C) Purchased before the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(2) For purposes of paragraph (1), "purchase" means any acquisition of property, but only if all 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 Sections 267(b) and 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 property is not acquired by one component member of an affiliated group from another component member of the same affiliated group.

(C) The basis of the property in the hands of the person acquiring it is not determined in whole or in part by reference to the adjusted basis of that property in the hands of the person from whom acquired.

(3) For purposes of this section, the cost of property does not include so much of the basis of that property as is determined by

reference to the basis of other property held at any time by the person acquiring that property.

(4) This section shall not apply to any property for which the taxpayer may not make an election for the income year under Section 179 of the Internal Revenue Code because of the provisions of Section 179(d) of the Internal Revenue Code.

(5) For purposes of subdivision (b), both of the following apply:

(A) All members of an affiliated group shall be treated as one taxpayer.

(B) The taxpayer shall apportion the dollar limitation contained in subdivision (f) among the component members of the affiliated group in whatever manner the board shall by regulations prescribe.

(6) For purposes of paragraphs (2) and (5), "affiliated group" has the meaning assigned to it by Section 1504 of the Internal Revenue Code, except that, for these purposes, the phrase "more than 50 percent" shall be substituted for the phrase "at least 80 percent" each place it appears in Section 1504(a) of the Internal Revenue Code.

(7) This section shall not apply to any property described in Section 168(f) of the Internal Revenue Code.

(8) In the case of an S corporation, the dollar limitation contained in subdivision (f) shall be applied at the entity level and at the shareholder level.

(d) 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 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.

(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 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. 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 that first commences doing business in the LAMBRA during the income 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 income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property that constitutes Section 24356.8 property.

(f) The aggregate cost of all Section 24356.8 property that may be taken into account under subdivision (a) for any income year shall not exceed the following applicable amounts for the income year of the designation of the relevant LAMBRA and income years thereafter:

	The applicable amount is:
Income year of designation	$100,000
1st income year thereafter	100,000
2nd income year thereafter	75,000
3rd income year thereafter	75,000
Each income year thereafter	50,000

(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 income year after the property was placed in service shall be included in income for that year.

(2) At the close of the second income year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (d), then the amount of the deduction previously claimed shall be added to the taxpayer's net income for the taxpayer's second income 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.

CHAPTER 1013

An act to add Article 7.5 (commencing with Section 680) to Chapter 1 of Division 2 of the Business and Professions Code, and to amend Section 5251 of the Welfare and Institutions Code, relating to health.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Article 7.5 (commencing with Section 680) is added to Chapter 1 of Division 2 of the Business and Professions Code, to read:

Article 7.5. Health Care Practitioners

680. Except as otherwise provided in this subdivision, a health care practitioner shall disclose, while working, his or her name and practitioner's license status, as granted by this state, on a name tag in at least 18-point type. A health care practitioner in a practice or an office, whose license is prominently displayed, may opt to not wear a name tag. If a health care practitioner or a licensed clinical social worker is working in a psychiatric setting or in a setting that is not licensed by the state, the employing entity or agency shall have the discretion to make an exception from the name tag requirement for individual safety or therapeutic concerns. In the interest of public safety and consumer awareness, it shall be unlawful for any person to use the title "nurse" in reference to himself or herself and in any capacity, except for an individual who is a registered nurse, or a licensed vocational nurse, or as otherwise provided in Section 2800. Nothing in this section shall prohibit a certified nurse's aide from using his or her title. For purposes of this article, "health care practitioner" means any person who engages in acts that are the subject of licensure or regulation under this division or under any initiative act referred to in this division.

SEC. 2. Section 5251 of the Welfare and Institutions Code is amended to read:

5251. For a person to be certified under this article, a notice of certification shall be signed by two people. The first person shall be the professional person, or his or her designee, in charge of the agency or facility providing evaluation services. A designee of the professional person in charge of the agency or facility shall be a

physician or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.

The second person shall be a physician or psychologist who participated in the evaluation. The physician shall be, if possible, a board certified psychiatrist. The psychologist shall be licensed and have at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.

If the professional person in charge, or his or her designee, is the physician who performed the medical evaluation or a psychologist, the second person to sign may be another physician or psychologist unless one is not available, in which case a licensed clinical social worker or a registered nurse who participated in the evaluation shall sign the notice of certification.

CHAPTER 1014

An act to add Chapter 2.3 (commencing with Section 16135) to Part 4 of Division 9 of the Welfare and Institutions Code, relating to human services, and making an appropriation therefor.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 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 Governor has implemented an adoption initiative that is aimed at increasing the number of adoptions of children who would otherwise remain in long-term foster care.

(b) Public Law 105-89, the Adoption and Safe Families Act of 1997, was signed into law in 1997 and includes provisions for implementing President Clinton's December 14, 1996, Executive Memorandum on Adoption that articulated the goal of doubling by the year 2002 the number of children adopted or placed in other permanent homes each year.

(c) Children with prenatal drug exposure are disproportionately represented in the foster care system and may be considered hard-to-place for purposes of adoption. Many of these children are born prematurely, remaining in hospitals almost five times as long as normal newborns. Many suffer long-term effects of drug exposure, requiring special education. Many may have developmental and behavioral problems and learning disabilities for which appropriate interventions must be provided.

(d) From 1995 to 1997, the United States Department of Health and Human Services' Administration on Children, Youth and

Families funded a demonstration project awarded jointly to the Los Angeles County Department of Children and Family Services, Adoptions Division, and the UCLA Center for Healthier Children, Families and Communities. The goal of this program, known as TIES for Adoption, was to promote the successful adoption and healthy growth and development of infants and children who were prenatally exposed to alcohol or other drugs. The program's final evaluation substantiated its success in achieving this goal.

(e) The TIES for Adoption program has been proven to help the effort to ensure successful adoptions of drug- and alcohol-exposed children who would otherwise remain in foster care or experience disruptions of their adoptive placements.

SEC. 2. Chapter 2.3 (commencing with Section 16135) is added to Part 4 of Division 9 of the Welfare and Institutions Code, to read:

CHAPTER 2.3. ADOPTION OF ALCOHOL- AND DRUG-EXPOSED AND HIV POSITIVE CHILDREN

16135. The purpose of this chapter is to establish a program for special training and services to facilitate the adoption of children who are HIV positive, or born to a substance-abusing mother. This program shall be available to any county that requests participation pursuant to procedures established by the department to the extent funds are appropriated through the annual Budget Act. Nothing in this chapter shall authorize the use of state funds appropriated for any other purpose to be used in this program.

16135.1. (a) "Eligible child" means any child who meets the requirements of paragraph (1) or (2), and paragraph (3).

(1) Any child who has a condition or symptoms resulting from, or are suspected as resulting from, alcohol or substance abuse by the mother.

(2) Any child who is HIV positive.

(3) Any child who meets the requirements of either paragraph (1) or (2) and who meets all of the following requirements:

(A) The child is a dependent child of the court.

(B) The child has an adoption case plan and resides with a preadoptive or adoptive caregiver, or the plan is to transition and move the child to a preadoptive or adoptive caregiver.

(b) "TIES for Adoption" means Training, Intervention, Education, and Services for Adoption, a training project developed and implemented by the Adoptions Division of the Los Angeles County Department of Children's Services, the UCLA Center for Healthier Children, Families, and Communities, and the UCLA Psychology Department, a demonstration project funded by the Federal Adoption Opportunities Program from September 30, 1995, to December 31, 1997, inclusive.

(c) "HIV positive" means having a human immunodeficiency virus infection.

(d) "Specialized in-home health care" means, but is not limited to, those services identified by the child's primary physician as appropriately administered by a prospective adoptive parent who has been trained by mental health or health care professionals.

16135.10. (a) In order to promote successful adoptions of substance and alcohol exposed court dependent children, the department shall establish a program of specialized training and supportive services to families adopting court dependent children who are either HIV positive or assessed as being prenatally exposed to alcohol or a controlled substance.

(b) The program shall include respite services. Notwithstanding any other provision of law, respite services shall be funded with a 30 percent nonfederal county share consistent with the normal sharing ratio for child welfare services. This county share may be provided with county general funds, in-kind contributions, or other funds not appropriated by the Budget Act. The source of the county share shall meet all applicable state and federal requirements and provide counties with maximum flexibility.

16135.13. (a) A participating county shall provide special training to recruited adoptive parents to care for eligible children. The training curriculum shall include, but is not limited to, all of the following:

(1) Orientation.

(2) Effect of alcohol and controlled substances on the fetus and children.

(3) Normal and abnormal infant and early childhood development.

(4) Special medical needs and disabilities.

(5) Recovery from addiction to alcohol and controlled substances.

(6) Self-care for the caregiver.

(7) HIV/AIDS in children.

(8) Issues in parenting and providing lifelong permanency and substance abuse prevention to, children with prenatal alcohol and other controlled substances exposure.

(9) Issues specific to caring for a child who tests HIV positive.

(b) Participating counties may provide the same special training to relative caretakers in the process of adopting program-eligible children.

16135.14. (a) The county shall determine whether a child is eligible for services pursuant to this section.

(b) A participating county shall select a specialized prospective adoptive home for the child.

(c) If an eligible child's adoptive placement changes from one participating county to another participating county, the child shall remain eligible for services.

16135.16. (a) In order to receive funding, all participating counties shall submit and have an approved plan that is in compliance with the policies and procedures established by the department.

(b) The requirements of this section may be met by the implementation of the TIES for Adoption program as defined in Subdivision (b) of Section 16135.1.

16135.17. Participating counties shall prepare an adoption services case plan pursuant to regulations adopted by the department and arrange for nonmedical support services. Nonmedical support services shall include respite care for specially trained prospective adoptive parents, including relative caretakers, pursuant to regulations adopted by the department. Nonmedical support services may also include, but are not limited to, temperament and behavior management training, consultation regarding medical and psychological issues and services, and educational advocacy.

16135.25. The department shall do all of the following:

(a) Develop necessary procedures and standardized programs for a specialized adoptive home training project.

(b) Assist counties in coordinating sources of funding and services available to eligible children in order to maximize the social services provided to these children and avoid duplication of program funding.

(c) Require that participating counties coordinate available services for this population and their adoptive families.

(d) Provide to a requesting county information necessary to establish a program.

16135.26. If a participating county has an existing contract for the provision of services provided for under this chapter, that contract may be continued through the 1998–99 state fiscal year.

16135.30. (a) Notwithstanding any other provision of law, subdivisions (b) and (c) shall control the placement of a child pursuant to this chapter.

(b) A county may place children who are alcohol or controlled substance exposed or HIV positive in prospective adoptive homes pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code.

(c) If a county makes a placement pursuant to subdivision (b), a preadoptive parent trained by health care professionals may provide specialized in-home health care to that child who was placed in their home for the purpose of adoption.

SEC. 3. The sum of one million dollars ($1,000,000) is hereby appropriated from the General Fund to the State Department of Social Services to implement Chapter 2.3 (commencing with Section 16135) of Part 4 of Division 9 of the Welfare and Institutions Code.

CHAPTER 1015

An act to amend Sections 1317.1 and 1371.4 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1317.1 of the Health and Safety Code is amended to read:

1317.1. Unless the context otherwise requires, the following definitions shall control the construction of this article and Section 1371.4:

(a) "Emergency services and care" means medical screening, examination, and evaluation by a physician, or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment, and surgery by a physician necessary to relieve or eliminate the emergency medical condition, within the capability of the facility.

(b) "Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in any of the following:

(1) Placing the patient's health in serious jeopardy.

(2) Serious impairment to bodily functions.

(3) Serious dysfunction of any bodily organ or part.

(c) "Active labor" means a labor at a time at which either of the following would occur:

(1) There is inadequate time to effect safe transfer to another hospital prior to delivery.

(2) A transfer may pose a threat to the health and safety of the patient or the unborn child.

(d) "Hospital" means all hospitals with an emergency department licensed by the state department.

(e) "State department" means the State Department of Health Services.

(f) "Medical hazard" means a material deterioration in medical condition in, or jeopardy to, a patient's medical condition or expected chances for recovery.

(g) "Board" means the Medical Board of California.

(h) "Within the capability of the facility" means those capabilities which the hospital is required to have as a condition of its emergency medical services permit and services specified on Services Inventory Form 7041 filed by the hospital with the Office of Statewide Health Planning and Development.

(i) "Consultation" means the rendering of an opinion, advice, or prescribing treatment by telephone and, when determined to be medically necessary jointly by the emergency and specialty physicians, includes review of the patient's medical record, examination, and treatment of the patient in person by a specialty

physician who is qualified to give an opinion or render the necessary treatment in order to stabilize the patient.

(j) An patient is "stabilized" or "stabilization" has occurred when, in the opinion of the treating provider, the patient's medical condition is such that, within reasonable medical probability, no material deterioration of the patient's condition is likely to result from, or occur during, a transfer of the patient as provided for in Section 1317.2, Section 1317.2a, or other pertinent statute.

SEC. 2. Section 1371.4 of the Health and Safety Code is amended to read:

1371.4. (a) A health care service plan, or its contracting medical providers, shall provide 24-hour access for enrollees and providers to obtain timely authorization for medically necessary care, for circumstances where the enrollee has received emergency services and care is stabilized, but the treating provider believes that the enrollee may not be discharged safely. A physician and surgeon shall be available for consultation and for resolving disputed requests for authorizations. A health care service plan that does not require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition or active labor need not satisfy the requirements of this subdivision.

(b) A health care service plan shall reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee, except as provided in subdivision (c). As long as federal or state law requires that emergency services and care be provided without first questioning the patient's ability to pay, a health care service plan shall not require a provider to obtain authorization prior to the provision of emergency services and care necessary to stabilize the enrollee's emergency medical condition.

(c) Payment for emergency services and care may be denied only if the health care service plan reasonably determines that the emergency services and care were never performed; provided that a health care service plan may deny reimbursement to a provider for a medical screening examination in cases when the plan enrollee did not require emergency services and care and the enrollee reasonably should have known that an emergency did not exist. A health care service plan may require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition.

(d) If there is a disagreement between the health care service plan and the provider regarding the need for necessary medical care, following stabilization of the enrollee, the plan shall assume responsibility for the care of the patient either by having medical personnel contracting with the plan personally take over the care of the patient within a reasonable amount of time after the disagreement, or by having another general acute care hospital under contract with the plan agree to accept the transfer of the

patient as provided in Section 1317.2, Section 1317.2a, or other pertinent statute. However, this requirement shall not apply to necessary medical care provided in hospitals outside the service area of the health care service plan. If the health care service plan fails to satisfy the requirements of this subdivision, further necessary care shall be deemed to have been authorized by the plan. Payment for this care may not be denied.

(e) A health care service plan may delegate the responsibilities enumerated in this section to the plan's contracting medical providers.

(f) Subdivisions (b), (c), (d), (g), and (h) shall not apply with respect to a health care service plan that has 3,500,000 enrollees and maintains a prior authorization system which includes the availability by telephone within 30 minutes of an emergency physician who is on duty at an emergency department of a general acute care hospital.

(g) The Department of Corporations shall adopt by July 1, 1995, on an emergency basis, regulations governing instances when an enrollee requires medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to requests for treatment authorization.

(h) The Department of Corporations shall adopt, by July 1, 1999, on an emergency basis, regulations governing instances when an enrollee in the opinion of the treating provider requires necessary medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to a request for treatment authorization from a treating provider who has a contract with a plan.

(i) The definitions set forth in Section 1317.1 shall control the construction 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.

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CHAPTER 1016

An act to amend Sections 1371.4 and 1797.98f of the Health and Safety Code, relating to emergency medical services.

[Approved by Governor September 29, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1371.4 of the Health and Safety Code is amended to read:

1371.4. (a) A health care service plan, or its contracting medical providers, shall provide 24-hour access for enrollees and providers to obtain timely authorization for medically necessary care, for circumstances where the enrollee has received emergency services and care as defined in Section 1317.1, is stabilized, but the treating provider believes that the enrollee may not be transferred or discharged safely. A physician and surgeon shall be available for consultation and for resolving disputed requests for authorizations. A health care service plan that does not require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency condition need not satisfy the requirements of this subdivision.

(b) A health care service plan shall reimburse providers for emergency services and care, as defined in Section 1317.1, provided to its enrollees, until the care results in stabilization of the enrollee, except as provided in subdivision (c).

(c) Payment for emergency services and care may be denied only if the health care service plan reasonably determines that the emergency services and care were never performed; provided that a health care service plan may deny reimbursement to a provider for a medical screening examination in cases when the plan enrollee did not require emergency services and care and the enrollee reasonably should have known that an emergency did not exist. As long as federal or state law requires that emergency services and care be provided without first questioning the patient's ability to pay, a health care service plan shall not require a provider to obtain authorization prior to the provision of emergency services and care.

(d) If there is a disagreement between the health care service plan and the provider regarding the need for necessary medical care, the plan shall assume responsibility for the care of the patient either by having its medical personnel personally take over the case of the patient within a reasonable amount of time after the disagreement, or by having a general acute care hospital under contract with the plan agree to accept the transfer of the patient as provided in Section 1317.2, Section 1317.2a, or other pertinent statute. However, this requirement shall not apply to necessary medical care provided in

hospitals outside the service area of the health care service plan. If the health care service plan fails to satisfy the requirements of this subdivision, further necessary care shall be deemed to have been authorized by the plan. Payment for this care may not be denied.

(e) A health care service plan may delegate the responsibilities enumerated in this section to the plan's contracting medical providers.

(f) Subdivisions (b), (c), (d), and (g) shall not apply with respect to either a provider with which the health care service plan has a contract that includes the provision of emergency services and care and necessary medical care or to a nonprofit health care service plan that has 3,500,000 enrollees and maintains a prior authorization system that includes the availability by telephone within 30 minutes of a practicing emergency department physician.

(g) The Department of Corporations shall adopt by July 1, 1995, on an emergency basis, regulations governing instances when an enrollee requires medical care following stabilization of an emergency condition, including appropriate timeframes for a health care service plan to respond to requests for treatment authorization.

SEC. 2. Section 1371.4 of the Health and Safety Code is amended to read:

1371.4. (a) A health care service plan, or its contracting medical providers, shall provide 24-hour access for enrollees and providers to obtain timely authorization for medically necessary care, for circumstances where the enrollee has received emergency services and care is stabilized, but the treating provider believes that the enrollee may not be discharged safely. A physician and surgeon shall be available for consultation and for resolving disputed requests for authorizations. A health care service plan that does not require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition or active labor need not satisfy the requirements of this subdivision.

(b) A health care service plan shall reimburse providers for emergency services and care provided to its enrollees, until the care results in stabilization of the enrollee, except as provided in subdivision (c). As long as federal or state law requires that emergency services and care be provided without first questioning the patient's ability to pay, a health care service plan shall not require a provider to obtain authorization prior to the provision of emergency services and care necessary to stabilize the enrollee's emergency medical condition.

(c) Payment for emergency services and care may be denied only if the health care service plan reasonably determines that the emergency services and care were never performed; provided that a health care service plan may deny reimbursement to a provider for a medical screening examination in cases when the plan enrollee did not require emergency services and care and the enrollee reasonably should have known that an emergency did not exist. A health care

service plan may require prior authorization as a prerequisite for payment for necessary medical care following stabilization of an emergency medical condition.

(d) If there is a disagreement between the health care service plan and the provider regarding the need for necessary medical care, following stabilization of the enrollee, the plan shall assume responsibility for the care of the patient either by having medical personnel contracting with the plan personally take over the care of the patient within a reasonable amount of time after the disagreement, or by having another general acute care hospital under contract with the plan agree to accept the transfer of the patient as provided in Section 1317.2, Section 1317.2a, or other pertinent statute. However, this requirement shall not apply to necessary medical care provided in hospitals outside the service area of the health care service plan. If the health care service plan fails to satisfy the requirements of this subdivision, further necessary care shall be deemed to have been authorized by the plan. Payment for this care may not be denied.

(e) A health care service plan may delegate the responsibilities enumerated in this section to the plan's contracting medical providers.

(f) Subdivisions (b), (c), (d), (g), and (h) shall not apply with respect to a nonprofit health care service plan that has 3,500,000 enrollees and maintains a prior authorization system that includes the availability by telephone within 30 minutes of a practicing emergency department physician.

(g) The Department of Corporations shall adopt by July 1, 1995, on an emergency basis, regulations governing instances when an enrollee requires medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to requests for treatment authorization.

(h) The Department of Corporations shall adopt, by July 1, 1999, on an emergency basis, regulations governing instances when an enrollee in the opinion of the treating provider requires necessary medical care following stabilization of an emergency medical condition, including appropriate timeframes for a health care service plan to respond to a request for treatment authorization from a treating provider who has a contract with a plan.

(i) The definitions set forth in Section 1317.1 shall control the construction of this section.

SEC. 3. Section 1797.98f of the Health and Safety Code is amended to read:

1797.98f. Notwithstanding any other provision of this chapter, an emergency physician and surgeon, or an emergency physician group, with a gross billings arrangement with a hospital shall be entitled to receive reimbursement from the Emergency Medical

Services Fund for services provided in that hospital, if all of the following conditions are met:

(a) The services are provided in a basic or comprehensive general acute care hospital emergency department, or in a standby emergency department in a small and rural hospital as defined in Section 124840.

(b) The physician and surgeon is not an employee of the hospital.

(c) All provisions of Section 1797.98c are satisfied, except that payment to the emergency physician and surgeon, or an emergency physician group, by a hospital pursuant to a gross billings arrangement shall not be interpreted to mean that payment for a patient is made by a responsible third party.

(d) Reimbursement from the Emergency Medical Services Fund is sought by the hospital or the hospital's designee, as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group.

For purposes of this section, a "gross billings arrangement" is an arrangement whereby a hospital serves as the billing and collection agent for the emergency physician and surgeon, or an emergency physician group, and pays the emergency physician and surgeon, or emergency physician group, a percentage of the emergency physician and surgeon's or group's gross billings for all patients.

SEC. 4. Section 2 of this bill incorporates amendments to Section 1371.4 of the Health and Safety Code proposed by both this bill and AB 682. It shall only become operative if (1) both bills are enacted and become effective on January 1, 1999, (2) each bill amends Section 1371.4 of the Health and Safety Code, and (3) this bill is enacted after AB 682, in which case Section 1 of this bill shall not become operative.

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

CHAPTER 1017

An act to amend Sections 77201.1 and 77201.3 of the Government Code, relating to trial court funding, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 77201.1 of the Government Code, as added by Section 5 of Chapter 406 of the Statutes of 1998, 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 1999–2000 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 May 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	$ 22,509,905
Alpine	–
Amador	–
Butte	–
Calaveras	–
Colusa	–
Contra Costa	11,974,535
Del Norte	–
El Dorado	–
Fresno	11,222,780
Glenn	–
Humboldt	–
Imperial	–
Inyo	–

Kern	9,234,511
Kings	–
Lake	–
Lassen	–
Los Angeles	175,330,647
Madera	–
Marin	–
Mariposa	–
Mendocino	–
Merced	–
Modoc	–
Mono	–
Monterey	4,520,911
Napa	–
Nevada	–
Orange	38,846,003
Placer	–
Plumas	–
Riverside	17,857,241
Sacramento	20,733,264
San Benito	–
San Bernardino	20,227,102
San Diego	43,495,932
San Francisco	19,295,303
San Joaquin	6,543,068
San Luis Obispo	–
San Mateo	12,181,079
Santa Barbara	6,764,792
Santa Clara	28,689,450
Santa Cruz	–
Shasta	–
Sierra	–
Siskiyou	–
Solano	6,242,661
Sonoma	6,162,466
Stanislaus	3,506,297
Sutter	–
Tehama	–
Trinity	–
Tulare	–

Tuolumne	–
Ventura	9,734,190
Yolo	–
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	717,075
Merced	1,733,156
Modoc	104,729
Mono	415,136
Monterey	3,330,125
Napa	719,168
Nevada	1,220,686

Orange	19,572,810
Placer	1,243,754
Plumas	193,772
Riverside	7,681,744
Sacramento	5,937,204
San Benito	302,324
San Bernardino	8,511,193
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	2,708,758
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	880,798
Yuba	289,325

(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) Except for those counties with a population of 70,000, or less, on January 1, 1996, 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 subdivisions (c) and (d) of Section 77201 as that section read on June 30, 1998, to the extent a county filed an appeal with the Controller with respect to the findings made by the Department of Finance. This paragraph shall not be construed to establish a new appeal process beyond what was provided by Section 77201, as that section read on June 30, 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 General Fund support for the trial courts.

(g) In any fiscal year in which a county of the first class pays the employer-paid retirement contribution for court employees, or any other employees of the county who provide a service to the court, and the amounts of those payments are charged to the budget of the courts, the sum the county is required to pay to the state pursuant to paragraph (1) of subdivision (b) shall be increased by the actual amount charged to the trial court up to twenty-three million five

hundred twenty-seven thousand nine hundred forty-nine dollars ($23,527,949) in that fiscal year. The county and the trial court shall report to the Controller and the Department of Finance the actual amount charged in that fiscal year.

(h) This section shall become operative on July 1, 1999.

SEC. 2. Section 77201.3 of the Government Code, as added by Section 6 of Chapter 406 of the Statutes of 1998, is amended to read:

77201.3. (a) The Legislature finds and declares that the delay until July 1, 1998, in adjusting county obligation payments as provided by subdivision (c) of Section 77201, has created a one-time negative fiscal impact to certain counties and shall be mitigated over a multi-year period, except as provided, pursuant to this section.

(b) Except as provided by subdivision (c), for each fiscal year for a three-year period commencing with the 1998–99 fiscal year, a county identified in this subdivision may reduce the amount it was required to remit to the state pursuant to paragraph (1) of subdivision (b) of Section 77201.1, by an amount not to exceed 33.3 percent of the amount identified for that county, as follows:

Jurisdiction	Amount
Alameda	$ 5,077,229
Contra Costa	2,251,310
El Dorado	196,769
Fresno	771,280
Humboldt	214,636
Kern	1,902,508
Kings	280,791
Los Angeles	19,028,623
Madera	16,581
Marin	84,372
Merced	345,600
Monterey	362,953
Orange	8,548,467
Placer	2,008,790
Riverside	1,626,433
Sacramento	2,874,779
San Diego	3,496,316
San Francisco	151,739
San Joaquin	565,159
San Luis Obispo	91,727
San Mateo	194,426
Santa Clara	400,508
Santa Cruz	379,468

Shasta	362,517
Solano	183,853
Sonoma	165,163
Stanislaus	1,630,883
Sutter	939,161
Tulare	405,789
Ventura	445,303

(c) On or before January 15, 1999, the Department of Finance shall determine if it is feasible to reduce from the amount counties are required to remit to the state for the 1999–2000 fiscal year, pursuant to paragraph (1) of subdivision (b) of Section 77201.1, the entire amount in subdivision (b) for each specified county.

(1) If the Department of Finance determines that it is feasible to allow for the full reduction of the amounts in subdivision (b) in the 1999–2000 fiscal year, then (A) the amounts identified in subdivision (b) shall be evenly credited to the payments in the 1999–2000 fiscal year that counties identified in subdivision (b) are required to remit to the state pursuant to paragraph (1) of subdivision (b) of Section 77201.1, and (B) subdivision (b) shall no longer be operative.

(2) If the Department of Finance determines that it is not feasible to allow for the full reduction of the amounts in subdivision (b) in the 1999–2000 fiscal year, then the department shall establish and conduct an appeal process for any county listed in subdivision (b) for which the 33.3 percent reduction over a three-year period pursuant to subdivision (b) would significantly contribute to extreme financial hardship on the county. The appeal process shall permit any county listed in subdivision (b) to submit a written appeal to the department, no later than February 15, 1999, that sets forth the circumstances that would make the provisions of subdivision (b) financially unfeasible and significantly contribute to extreme hardship for the applicant county. The department shall complete its review and make a final decision concerning all applications no later than April 1, 1999. The decision of the department shall be final and not be subject to further appeal. A written copy of the decision shall be provided to the affected county and to the chairs of the fiscal committees of the Legislature.

If the department finds that the 33.3 percent reduction over a three-year period would cause extreme financial hardship on the county submitting an appeal, then the full amount for that county specified in subdivision (b) shall be evenly credited to the payments in the 1999–2000 fiscal year that the county was required to remit to the state pursuant to paragraph (1) of subdivision (b) of Section 77201.1.

(d) For purposes of determining whether a county would suffer extreme financial hardship pursuant to paragraph (2) of subdivision

(c), the criteria considered by the Department of Finance shall include, but not be limited to, whether the applicant county had:

(1) Below average statewide growth in general purpose revenue.

(2) Below average statewide growth in property tax assessed valuation.

(3) Above average statewide unemployment rate.

(4) Above average statewide growth in program expenditures.

(5) Extraordinary local costs caused by natural disasters.

(6) Current finding of financial distress from the Commission on State Mandates with regard to the general assistance program under Section 17000 of the Welfare and Institutions Code.

(7) Other criteria, as determined by the department, which demonstrates financial hardship.

(e) (1) Under no circumstance shall the total reduction for a county pursuant to this section exceed the amount identified for that county in subdivision (b). Pursuant to subdivision (a), the above amounts are intended to mitigate the one-time negative fiscal impact to specified counties as a result of subdivision (e) of Section 77201 and are not subject to appeal. Except as provided in paragraph (2), this section shall not apply to any county whose remittance to the state under paragraph (1) of subdivision (b) of Section 77201.1, is zero in the 1999–2000 fiscal year.

(2) This section shall apply to a county (A) that will have its remittance to the state under paragraph (1) of subdivision (b) of Section 77201.1 reduced to zero in the 1999–2000 fiscal year and (B) for which the amount listed in subdivision (b) of this section is greater than the amount the county was required to remit to the state under subdivision (h) of Section 77201.1 as amended by Section 4 of Chapter 406 of the Statutes of 1998, in which case the provisions set forth in subdivision (c) shall apply to that county if the county submits an appeal pursuant to that subdivision. For any county eligible under this paragraph, the Department of Finance may approve a reduction that is equal to or less than the amount specified for that county in subdivision (b). The reduction approved shall be reduced from the amount specified for that county in paragraph (2) of subdivision (b) of Section 77201.1 for the 1998–99 fiscal year only.

(f) It is the intent of the Legislature that support for state trial court funding not be impacted as a result of this section.

(g) This section shall be repealed on January 1, 2002.

SEC. 3. There is hereby appropriated the sum of sixteen million five hundred fifty-nine thousand dollars ($16,559,000) for transfer from the General Fund to the Trial Court Trust Fund in augmentation of Item 0450-111-0001 of the Budget Act of 1998.

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 an orderly transition to state trial court funding and enough funding to support appropriations contained in the 1998 Budget Act for the purpose of supporting the administration of justice throughout the State of California, it is necessary that this act go into effect immediately.

CHAPTER 1018

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

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

On this date I have signed Senate Bill No. 687.

This bill would appropriate funds for breast cancer early detection services, primary care clinics, and children's medical treatment.

I have reduced the appropriation in Section 1 (b) from $7,209,000 to $3,661,000, the amount needed to maintain the Expanded Access to Primary Care Program (EAPC) at its current level.

I have deleted the $1,800,000 appropriation in Section 1 (c) for the Children's Treatment Program. This program has historically been funded with Proposition 99 revenues. As the Proposition 99 revenues continue to decline, the pressure to replace that revenue with General Fund will increase. Any decision to replace those Proposition 99 revenues should be considered as part of a broader policy discussion.

PETE WILSON, Governor

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

SECTION 1. There is hereby appropriated the sum of thirteen million two hundred eighteen thousand dollars ($13,218,000) as follows:

(a) The sum of four million two hundred nine thousand dollars ($4,209,000) from the Unallocated Account in the Cigarette and Tobacco Products Surtax Fund, to the State Department of Health Services to fund the Breast Cancer Early Detection Program. Of this amount, seven hundred ninety-four thousand dollars ($794,000) is allocated for support, in augmentation of Item 4260-001-0236, and three million four hundred fifteen thousand dollars ($3,415,000) is allocated for local assistance, in augmentation of Item 4260-111-0236, of the Budget Act of 1998, Chapter 324 of the Statutes of 1998.

(b) The sum of seven million two hundred nine thousand dollars ($7,209,000) from the General Fund to the State Department of Health Services for the Expanded Access to Primary Care Program provided for by Article 2 (commencing with Section 124900) of Chapter 7 of Part 1 of Division 106 of the Health and Safety Code in augmentation of local assistance Item 4260-111-001 of the Budget Act of 1998.

(c) The sum of one million eight hundred thousand dollars ($1,800,000) from the General Fund to the State Department of Health Services for deposit in the CHDP Treatment Account established pursuant to Section 16934.5 of the Welfare and Institutions Code for the provisions of health care services in the Children's Treatment Program.

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 timely apply the funding contained in this act to the 1998–99 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1019

An act to amend Sections 42825, 42835, 42850, and 42855 of the Public Resources Code, relating to waste tires.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 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. 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.

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. 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.

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 intentionally or 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 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.

(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 42855 of the Public Resources Code is amended to read:

42855. All penalties collected under Section 42850 shall be deposited in the California Tire Recycling Management Fund created pursuant to Section 42885 if the attorney who brought the action represented the board, or shall be retained by a city, county, or city and county designated pursuant to subdivision (c) of Section 42850, if the attorney who brought the action represents the city, county, or city and county. The moneys retained by the city, county, or city and county shall be expended on enforcement and cleanup required under this chapter, including, but not limited to, the prosecution of enforcement actions.

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 2181. 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 2181, 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 2181. 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 2181, 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 2181. 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 2181, 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 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.

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 1020

An act to amend Sections 42871 and 42885 of the Public Resources Code, relating to solid waste.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 42871 of the Public Resources Code is amended to read:

42871. (a) The board shall administer a tire recycling program that promotes and develops alternatives to the landfill disposal of used whole tires.

(b) Notwithstanding Section 7550.5 of the Government Code, the board shall submit a preliminary waste tire report, together with recommendations for legislation, to the Legislature and the

Governor not later than May 1, 1999, and a final report on these matters to the Legislature and the Governor not later than June 30, 1999. The board shall convene a working group of affected parties to assist the board in the development of this report and any proposed recommendations for legislation. The report shall include a status report with respect to waste tires in California, as well as an examination of programs needed to provide sustainable end uses for the waste tires generated in California and the reduction of existing waste tire stockpiles. The report shall include, but need not be limited to, the following elements:

(1) An evaluation of the performance and cost-effectiveness of existing state and local agency programs related to waste tires and, as appropriate, a review of other successful out-of-state tire programs. At a minimum, the report shall include an analysis of all of the following:

(A) The use of retreaded tires on state-owned vehicles pursuant to the Retreaded Tire Program (Chapter 7 (commencing with Section 42400)), which shall be reported to the board by the Department of General Services.

(B) The use of tires as paving materials in state projects pursuant to Chapter 14 (commencing with Section 42700), which shall be reported to the board by the Department of Transportation.

(C) Waste tire facilities conducting business pursuant to Chapter 16 (commencing with Section 42800).

(D) Storage of tires at landfills, tire recycling, the tire recycling fee, and the use of recycled tire products by state agencies pursuant to Chapter 17 (commencing with Section 42860).

(E) The tire hauler registration program conducted pursuant to Chapter 19 (commencing with Section 42950).

(F) The board's progress in meeting the intent of subdivision (a) of Section 42870 to reduce the landfill disposal and stockpiling of used whole tires by 25 percent within four years beginning in 1991.

(2) A critical analysis of proposed strategies and resources necessary to eliminate stockpiles of waste tires, protect public health and the environment, and increase sustainable economic markets for waste tires in California. The report shall also include an estimate of waste tires imported from other states for use or disposal in this state, including options and recommendations, as appropriate, to remedy the adverse impacts, if any, of imported waste tires on the achievement of the waste tire management goals of the state.

(3) The board, in consultation with the tire manufacturing industry, shall include a component in the report on the activities of tire manufacturers in addressing the recycling and disposal of waste tires.

SEC. 2. Section 42885 of the Public Resources Code is amended to read:

42885. (a) Every person who purchases a new tire, as defined in subdivision (c), from a retail seller of new tires shall pay a fee of

twenty-five cents ($0.25) per tire to the seller. The retail seller shall collect the fee at the time of sale, may retain 10 percent of the fee as reimbursement for any costs associated with the collection of the fee, and shall remit the remainder to the state on a quarterly schedule for deposit in the California Tire Recycling Management Fund, which is hereby created in the State Treasury.

(b) The board, or its agent authorized pursuant to Section 42882, shall be reimbursed for its costs of collection, auditing, and refunds associated with the California Tire Recycling Management Fund, but not to exceed 3 percent of the total annual revenue deposited in the fund.

(c) For purposes of this section, "new tire" means a pneumatic or solid tire intended for use with on-road or off-road motor vehicles, motorized equipment, construction equipment, or farm equipment that is sold separately from the motor vehicle, motorized equipment, construction equipment, or farm equipment. "New tire" does not include retreaded or recycled tires or tires that are mounted on wheels and sold as part of a vehicle or equipment.

(d) This section shall remain in effect only until January 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2001, deletes or extends that date.

SEC. 3. It is the intent of the Legislature that in expending funds from the California Tire Recycling Management Fund during the 1999–2000 fiscal year pursuant to Section 42889 of the Public Resources Code, the California Integrated Waste Management Board emphasize the purposes of permitting, enforcement, and cleanup.

CHAPTER 1021

An act to add Chapter 6 (commencing with Section 132400) to Division 12.7 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Chapter 6 (commencing with Section 132400) is added to Division 12.7 of the Public Utilities Code, to read:

CHAPTER 6. PASADENA METRO BLUE LINE CONSTRUCTION AUTHORITY

132400. For purposes of this chapter, the following terms have the following meanings:

(a) The "authority" is the Pasadena Metro Blue Line Construction Authority created under this chapter.

(b) The "board" is the governing board of the authority.

(c) The "commission" is the California Transportation Commission.

(d) The "LACMTA" is the Los Angeles County Metropolitan Transportation Authority.

(e) The "project" is the Los Angeles-Pasadena Metro Blue Line light rail project extending from Union Station in the City of Los Angeles to Sierra Madre Villa Boulevard in the City of Pasadena and any mass transit guideway that may be planned east of Sierra Madre Villa Boulevard along the rail right-of-way extending to the City of Claremont.

132405. The authority is hereby created for the purpose of awarding and overseeing all design and construction contracts for completion of the project.

132410. (a) The authority has all of the powers necessary for planning, acquiring, leasing, developing, jointly developing, owning, controlling, using, jointly using, disposing of, designing, procuring, and building the project, including, but not limited to, all of the following:

(1) Acceptance of grants, fees, and allocations from the state, local agencies, and private entities.

(2) Acquiring, through purchase or through eminent domain proceedings, any property necessary for, incidental to, or convenient for, the exercise of the powers of the authority.

(3) Incurring indebtedness, secured by pledges of revenue available for project completion.

(4) Contracting with public and private entities for the planning, design, and construction of the project. These contracts may be assigned separately or may be combined to include any or all tasks necessary for completion of the project.

(5) Entering into cooperative or joint development agreements with local governments or private entities. These agreements may be entered into for the purpose of sharing costs, selling or leasing land, air, or development rights, providing for the transferring of passengers, making pooling arrangements, or for any other purpose that is necessary for, incidental to, or convenient for the full exercise of the powers granted the authority. For purposes of this paragraph, "joint development" includes, but is not limited to, an agreement with any person, firm, corporation, association, or organization for the operation of facilities or development of projects adjacent to, or physically or functionally related to, the project.

(6) Relocation of utilities, as necessary for completion of the project.

(b) The duties of the authority include, but are not limited to, all of the following:

(1) Conducting the financial studies and the planning and engineering necessary for completion of the project.

(2) (A) Adoption of an administrative code, not later than 60 days after establishment of the authority, for administration of the authority in accordance with any applicable laws, including, but not limited to, the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), contracting and procurement laws, laws relating to contracting goals for minority and women business participation, and the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(B) (i) The administrative code adopted under subparagraph (A) shall include a code of conduct for employees and board members that is consistent with Sections 84308 and 87103 of the Government Code and prohibits board members and staff from accepting gifts valued at ten dollars ($10) or more from contractors, potential contractors, or their subcontractors.

(ii) The code shall require the disclosure, on the record, of the proceedings by the officer of the agency who receives a contribution within the preceding 24 months in an amount of more than two hundred fifty dollars ($250) from a party or participant to a proceeding, and the disclosure by the party or participant.

(iii) The code shall provide that no officer of the agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding, as described in Section 84308 of the Government Code, if the officer has willfully or knowingly received a contribution in the amount of more than two hundred fifty dollars ($250) within the preceding 24 months from a party or his or her agent, or from any participant or his or her agent if the participant has a financial interest in the decision.

(iv) Any officer deemed ineligible to participate in a proceeding due to the provisions of this code of conduct may be replaced for the purposes of that proceeding by an appointee chosen by the appropriate appointing authority.

(v) Under the code of conduct, board members shall be deemed to have a financial interest in a decision within the meaning of Section 87100 of the Government Code if the decision involves the donor of, or intermediary or agent for a donor of, a gift or gifts aggregating ten dollars ($10) or more in value within the 12 months prior to the time the decision was made.

(3) Completion of a detailed management, implementation, safety, and financial plan, including, but not limited to, a full funding program, for the project and submission of the plan to the Governor, the Legislature, and the commission not later than 90 days after establishment of the authority.

(c) The authority shall make reasonable progress, as determined by the commission, in the design and construction of the project

within the timetable imposed under the 1998 State Transportation Improvement Program.

132415. (a) The authority shall be governed by a board consisting of five voting members and one nonvoting member who shall be appointed as follows:

(1) Three members shall be appointed by the City Councils of the Cities of Los Angeles, Pasadena, and South Pasadena, with each city council appointing one member by a majority vote of the membership of that city council.

(2) One member shall be appointed by the President of the Governing Board of the San Gabriel Valley Council of Governments, subject to confirmation by that board.

(3) One member shall be appointed by the LACMTA.

(4) The nonvoting member shall be appointed by the Governor.

(b) All members shall serve a term of not more than four years, with no limit on the number of terms that may be served by any person.

(c) If the position of a voting member becomes vacant, an alternate voting member may be appointed by a majority vote of the board to serve until the position is filled as required under subdivision (a).

(d) Members of the board are subject to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(e) Three members of the board shall constitute a quorum.

(f) The board shall elect a chairperson and vice chairperson from among the membership of the board.

(g) Each member of the board may be compensated at a rate of not more than one hundred fifty dollars ($150) per day spent attending to the business of the authority. Compensation, if paid, shall not exceed six hundred dollars ($600) per month, plus expenses directly related to the performance of duties imposed by the authority, including, but not limited to, travel and personal expenses.

132420. (a) The board may appoint an executive director to serve at the pleasure of the authority.

(b) The executive director is exempt from all civil service provisions and shall be paid a salary established by the board.

(c) The executive director may appoint staff or retain consultants as necessary to carry out the duties of the authority.

(d) All contracts approved and awarded by the executive director shall be awarded in accordance with state law relating to procurement. Awards shall be based on price or competitive negotiation, or on both of those things.

132425. The LACMTA shall identify and expeditiously enter into an agreement with the authority to hold in trust with the authority all real and personal property, and any other assets accumulated in the planning, design, and construction of the project, including, but not limited to, rights-of-way, documents, third-party agreements,

contracts, and design documents, as necessary for completion of the project.

132430. (a) The LACMTA shall transfer the unencumbered balance of all local funds programmed for completion of the project and that have been identified in the Restructuring Plan adopted by the LACMTA Board of Directors on May 13, 1998, to the authority for completion of the project.

(b) The authority is eligible to receive allocations of state funds for the project. The unencumbered balance of funds currently programmed or allocated to the LACMTA for completion of the project and that have been identified in the Restructuring Plan adopted by the LACMTA Board of Directors on May 13, 1998, shall be allocated to the authority for completion of the project.

(c) Any transfer of funds by the LACMTA under this section shall be subject to the terms of the memorandum of understanding entered into between the LACMTA and the commission on June 2, 1998.

132435. The authority shall enter into a memorandum of understanding with the LACMTA that shall specifically address the ability of the LACMTA to review any significant changes in the scope of the design or construction, or both design and construction, of the project. For purposes of this section, the term "significant change" means any change of mode or technology, or any other substantive change that affects the connectivity and operation of the project as part of the overall transit system operated by the LACMTA, or any combination of those things. Design and construction of a light rail project that is consistent with the current scope of the project shall not be deemed to be a significant change in the scope of the project and shall not require concurrence by the LACMTA.

132440. The authority shall not encumber any future farebox revenue anticipated from the operation of the project.

132445. The authority shall not encumber the project with any obligation that is transferable to the LACMTA upon completion of the design and construction of the project. The design and construction to be administered by the authority does not include rolling stock, which is a component of the operation of the project and shall be administered by the LACMTA. This section does not apply to any joint development programs, as authorized under paragraph (5) of subdivision (a) of Section 132410, that may be utilized to contribute to the financing of project design and construction.

132450. The authority shall be dissolved upon completion of construction of the light rail project. The LACMTA shall assume responsibility for operating the project upon dissolution of the authority.

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 1022

An act to add and repeal Section 33319.6 to the Education Code, relating to education, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

I am signing Assembly Bill No. 2274 with a deletion.

This bill would require the State Department of Education to collect and summarize data on pupil achievement, outcomes, and characteristics for all alternative education programs in addition to data on their funding from various sources, and appropriate $100,000 to the Department of Education for this purpose.

It is my understanding that this bill is in response to my veto of AB 792 (Havice), a 1997 bill that would have established a method to equalize continuation school funding. In my veto message for AB 729, I stated that we needed information on what impact, if any, the different rates of continuation school funding are producing in student outcomes and achievement. The data collection described in this bill would address many of the concerns raised in my veto of AB 729 and could provided the basis for a meaningful evaluation of continuation school funding and effectiveness.

Although I am signing AB 2274, I am deleting Section 2 in its entirety, which includes the $100,000 General Fund appropriation. The Department of Education should already be collecting the sort of information described in this bill as part of ongoing program evaluation and administration. But since they have failed to collect the most basic information on these programs, I will support this measure. However, I cannot support providing additional funding for the Department of Education to perform an activity that is already within their existing scope of responsibility.

PETE WILSON, Governor

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

SECTION 1. Section 33319.6 is added to the Education Code, to read:

33319.6. (a) Commencing with the 1998–99 fiscal year, the State Department of Education shall collect and summarize the data described in subdivision (b) and on or before January 1 of the fiscal year following the fiscal year for which data is collected shall report the results to the State Board of Education, the Governor, the Department of Finance, the Legislative Analyst, the Assembly Committee on Education, and the Senate Committee on Education.

(b) The State Department of Education shall collect the following data for all alternative education programs, including, but not limited to, continuation high schools, independent study, and alternative schools:

(1) Student achievement.

(2) Dropout rates.

(3) Pupil expulsions and suspensions.

(4) Return rates of pupils to traditional school settings, including, the regular high school.

(5) High school graduation rates.

(6) Demographic data such as ethnicity, socioeconomic status, gender, as well as data on pupils who are pregnant, parenting, or working while enrolled in school.

(7) State, federal, and local funding.

(8) Other data which the department determines would be useful to review the strengths and weaknesses of alternative education programs.

(c) The Superintendent of Public Instruction shall appoint an advisory committee to assist with the development of the data collection instrument, the review of the data collected, and continued improvement of the data collection system. The committee shall consist of at least one representative each from the Department of Finance, the office of the Legislative Analyst, the statewide associations representing continuation high schools, independent study, school administrators, and teachers. Members of the advisory committee shall serve without compensation, but the State Department of Education shall reimburse members for travel expenses.

(d) 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.

SEC. 2. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund for the 1998–99 fiscal year to the State Department of Education for the purposes of Section 33319.6 of the Education 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:

So that data collection and reporting required by this act may take place as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1023

An act to amend Section 70901 of the Education Code, and to amend Sections 10295, 10430, 12100.5, and 12120 of, and to add Sections 20661 and 20662 to, the Public Contract Code, relating to community colleges.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 70901 of the Education Code is amended to read:

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome

measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Contract for the procurement of goods and services, as necessary.

(16) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

SEC. 2. Section 10295 of the Public Contract Code, as amended by Chapter 88 of the Statutes of 1998, 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, by the Board of Governors of the California Community Colleges, 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. 3. Section 10430 of the Public Contract Code, as amended by Section 72 of Chapter 88 of the Statutes of 1998, 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 and the Board of Governors of the California Community Colleges 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 for 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. 3.5. Section 10430 of the Public Contract Code, as amended by Section 72 of Chapter 88 of the Statutes of 1998, is amended to read:

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California.

(b) (1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all individuals, companies, corporations, or other entities that bid on or are awarded contracts, either as contractors or subcontractors, pursuant to that chapter.

(2) The changes made to this subdivision during the 1998 portion of the 1997–98 Regular Session shall not be construed to have retroactive effect on any pending action, arbitration, or administrative proceeding, but shall only apply to an action, arbitration, or administrative proceeding, at law or in equity, that is commenced on or after January 1, 1999.

(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 and the Board of Governors of the California Community Colleges 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 for 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. 4. Section 12100.5 of the Public Contract Code is amended to read:

12100.5. The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the

California Community Colleges shall not be subject to this chapter except that the trustees shall develop policies and procedures maintained in its state university administrative manual and the board shall adopt policies and procedures maintained in its administrative manual that further the legislative policies for procurement expressed in this chapter but without the involvement of the Director of Finance and the Director of General Services or the Department of Finance and the Department of General Services.

SEC. 5. Section 12120 of the Public Contract Code is amended to read:

12120. The Legislature finds and declares that, with the advent of deregulation in the telecommunications industry, substantial cost savings can be realized by the state through the specialized evaluation and procurement of alternative telecommunications systems. All contracts for the acquisition of telecommunications services and all contracts for the acquisition of telecommunications goods, whether by lease or purchase, shall be made by, or under the supervision of, the Department of General Services. All procurements shall be accomplished in accordance with Chapter 3 (commencing with Section 12100), relating to the acquisition of electronic data-processing goods and services, except to the extent any directive or provision is uniquely applicable to electronic data-processing acquisitions. The Department of General Services shall have responsibility for the establishment of policy and procedures for telecommunications. The Department of General Services shall have responsibility for the establishment of tactical policy and procedures for data-processing acquisitions consistent with statewide strategic policy as established by the Department of Finance. The Department of Finance shall have review and approval responsibility of data-processing information and telecommunication acquisitions to assure consistency with budgetary objectives. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall assume the functions of the Department of Finance and the Department of General Services with regard to procurement of telecommunication goods and services by the California State University and the California Community Colleges, respectively. The trustees and the board shall each grant to the Department of General Services, Division of Telecommunications, an opportunity to bid whenever the university or the college system solicits bids for telecommunications goods and services.

SEC. 6. Section 20661 is added to the Public Contract Code, to read:

20661. (a) The Chancellor of the California Community Colleges is authorized to enter into a contract on behalf of one or more community college districts, subject to the following restrictions:

(1) No district may be required to participate in any contract entered into pursuant to this section.

(2) The cost to each district that is a party to or a beneficiary of a contract entered into pursuant to this section must be lower than the cost the district could obtain through its standard contracting procedures. No contract for the procurement of goods or services may be made when a bid has been received by a participating district for the procurement of the same goods or services unless the contract would result in a lower price for the goods or services upon the same terms, conditions, and specifications.

(3) The state shall not incur any financial responsibility in connection with a contract entered into pursuant to this section.

(b) The Chancellor of the California Community Colleges is authorized to charge a fee, commission, or other charge to either or both of the following:

(1) Each provider of goods or services under a contract entered into pursuant to this section.

(2) Each community college district that the chancellor enters into a contract on behalf of pursuant to this section.

(c) On or before January 1, 2001, the Chancellor of the California Community Colleges shall report to the Legislature and the Governor on contracts entered into pursuant to this section and any resultant cost savings.

(d) The Board of Governors of the California Community Colleges shall adopt regulations to implement this section.

SEC. 7. Section 20662 is added to the Public Contract Code, to read:

20662. The Chancellor of the California Community Colleges is authorized to enter into a contract or other agreement with the governing board of any community college district whereby the district performs services or acts as a fiscal agent on behalf of the California Community colleges. This section shall apply only when the funds for the contract or agreement are in satisfaction of the state obligation to provide funding pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 7.5. (a) Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code applies to the Board of Governors of the California Community Colleges and to the Chancellor's Office of the California Community Colleges. The Legislature finds and declares that this subdivision is declaratory of existing law.

(b) Nothing in this act shall be construed to provide any exemption from Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code for the Board of Governors of the California Community Colleges or the Chancellor's Office of the California Community Colleges.

SEC. 8. It is the intent of the Legislature that this act will result in greater efficiency in the operation of the California Community Colleges.

SEC. 9. Section 3.5 of this bill incorporates amendments to Section 10430 of the Public Contract Code proposed by both this bill and SB 412. 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 10430 of the Public Contract Code, and (3) this bill is enacted after SB 412, in which case Section 3 of this bill shall not become operative.

CHAPTER 1024

An act to amend Section 1094.5 of the Code of Civil Procedure, to amend Sections 3517.6, 18670, 18903, 19056.5, 19141, 19142, 19170.1, 19173.1, 19175.3, 19570.1, 19572.1, 19574, 19582, 19582.1, 19582.6, 19702, 19786, 19798, 19815.41, 19816.2, 19817, 19826.1, 19828, 19829, 19832, 19834, 19835, 19836.1, 19841, 19994, 19994.1, 19994.2, 19997, 19997.3, 19997.4, 19997.5, 19997.6, 19997.7, 19997.8, 19997.11, 19997.13, 22754, 22754.5, and 22955 of, and to add Sections 19576.5, 21363.6, 21465.5, 22754.7, 22955.5, and 22960.100 to, the Government Code, and to amend Sections 10295 and 10344.1 of the Public Contract Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. The Legislature finds and declares that the purpose of this act is to adopt an agreement pursuant to Section 3517 of the Government Code entered into by the state employer and a recognized employee organization and to make any necessary statutory changes in health, retirement, salary, or other benefits to implement that agreement.

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 8, the CDF Firefighters, and that require 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 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. This subdivision shall apply to state employees in State Bargaining Unit 8. For purposes of this section, the court is not authorized to review any disciplinary decisions reached pursuant to Section 19576.1, 19576.2, or 19576.5 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, 20796, 21600, 21602, 21604, 21605, 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, 20796, 21600, 21602, 21604, 21605, 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 to state employees in State Bargaining Unit 8 or 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, 20796, 21600, 21602, 21604, 21605, 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 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.

(d) This subdivision shall apply only to state employees in State Bargaining Unit 8. For the purposes of subdivision (a), any discipline, as defined by the memorandum of understanding or Section 19576.5, is not subject to either a board investigation or hearing.

SEC. 8. 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, 8, 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. 9. 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, 8, 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. 10. Section 19141 of the Government Code is amended to read:

19141. (a) 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.

(b) 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.

(c) 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) (A) Within four years after the effective date of an exempt appointment if appointed under any other authority.

(B) Within four years after the effective date of an exempt appointment if appointed under any other authority. Notwithstanding subparagraph (A), this subparagraph shall apply to state employees in State Bargaining Unit 5, 6, 8, or 16.

(d) 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.

(e) 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.

(f) 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.

(g) 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. 11. 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, 8, 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. 12. 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, 8, 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. 13. Section 19173.1 of the Government Code is amended to read:

19173.1. (a) Effective June 1, 1998, notwithstanding Section 19173, this section shall apply to state employees in State Bargaining Unit 16. This section also shall apply to state employees in State Bargaining Unit 8.

(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. 14. Section 19175.3 of the Government Code is amended to read:

19175.3. (a) Notwithstanding Section 19175, this section shall apply to state employees in State Bargaining Unit 8 or 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. 15. Section 19570.1 of the Government Code is amended to read:

19570.1. Notwithstanding Section 19570, this section shall apply to state employees in State Bargaining Unit 8 or 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. 16. Section 19572.1 of the Government Code is amended to read:

19572.1. (a) Notwithstanding Section 19572, this section shall apply to state employees in State Bargaining Unit 8 or 16.

(b) Disciplinary actions pursuant to Section 19576.2 or 19576.5 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. 17. 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.

(d) This subdivision shall apply only to state employees in State Bargaining Unit 8. This section shall not apply to minor discipline, as defined by Section 19576.5 or a memorandum of understanding.

SEC. 18. Section 19576.5 is added to the Government Code, to read:

19576.5. Notwithstanding Section 19576, this section shall apply only to state employees in State Bargaining Unit 8.

(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 8 has expired, the state employer shall follow the minor discipline appeal procedures contained in the expired memorandum of understanding for state employees in State Bargaining Unit 8 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 (29 U.S.C. Sec. 213(a)(1)), 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 8 and the Ralph C. Dills Act (Part 10.3 (commencing with Section 3512) of Division 4 of Title 1).

SEC. 19. 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.

(g) This section shall not apply to minor discipline, as defined in a memorandum of understanding or by Section 19576.5 for state employees in State Bargaining Unit 8.

SEC. 20. Section 19582.1 of the Government Code is amended to read:

19582.1. Notwithstanding Section 19582, this section shall apply to state employees in State Bargaining Unit 8 or 16.

(a) The board's review of decisions of minor discipline, as defined by a memorandum of understanding or by Section 19576.2 or 19576.5, respectively, 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. 21. Section 19582.6 of the Government Code is amended to read:

19582.6. (a) Effective June 1, 1998, notwithstanding Section 19582.5, this section shall apply to state employees in State Bargaining

Unit 16. Notwithstanding Section 19582.5, this section also shall apply to state employees in State Bargaining Unit 8.

(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. 22. 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, 8, 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 apply only 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.

(3) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. 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 19576.5 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. 23. 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, 8, 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. 24. 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, 8, or 16.

SEC. 25. 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, 8, 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. 26. 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, 8, or 16.

SEC. 27. 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, 8, or 16.

SEC. 28. Section 19826.1 of the Government Code is amended to read:

19826.1. Notwithstanding Section 19826, effective June 1, 1998, this section shall apply to state employees in State Bargaining Unit 16. Notwithstanding Section 19826, effective January 1, 1999, this section also shall apply to state employees in State Bargaining Unit 6.

(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. 29. 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.

(e) Effective January 1, 1999, this section shall not apply to state employees in State Bargaining Unit 8.

SEC. 30. 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 to state employees in State Bargaining Unit 16. Effective January 1, 1999, notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 8. 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. 31. 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 only 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.

(4) Effective January 1, 1999, notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. 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. 32. 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.

(e) Effective January 1, 1999, this section shall not apply to state employees in State Bargaining Unit 8.

SEC. 33. 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.

(e) Effective January 1, 1999, this section shall not apply to state employees in State Bargaining Unit 8.

SEC. 34. Section 19836.1 of the Government Code is amended to read:

19836.1. Effective June 1, 1998, notwithstanding Section 19836, this section shall apply to state employees in State Bargaining Unit 16. Effective January 1, 1999, notwithstanding Section 19836, this section shall apply to state employees in State Bargaining Unit 8.

(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. 35. 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, 8, 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. 36. 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, 8, 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. 37. 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, 8, 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. 38. 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, 8, 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. 39. 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, 8, 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. 40. 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, 8, 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 8 or 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 8 or 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. 41. 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, 8, 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. 42. 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, 8, 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. 43. 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, 8, 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. 44. 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, 8, 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. 45. 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, 8, 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. 46. 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, 8, 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. 47. 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, 8, 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. 48. Section 21363.6 is added to the Government Code, to read:

21363.6. Notwithstanding Section 21363, the limitation on the service retirement benefit shall be 85 percent for state peace officer/firefighter members in State Bargaining Unit 8 who retire on and after January 1, 1999. This provision may also be applied to state peace officer/firefighter members in related supervisory or confidential positions, provided that the Department of Personnel Administration has approved this inclusion in writing to the board.

SEC. 49. Section 21465.5 is added to the Government Code, to read:

21465.5. Section 21465 shall also apply to state peace officer/firefighter members in State Bargaining Unit 8 who retire on and after January 1, 1999, provided that a memorandum of understanding has been agreed upon by the state and the recognized employee organization to become subject to that section. That section shall also apply to state peace officer/firefighter members in related supervisory and confidential positions, provided that the Department of Personnel Administration has approved their inclusion.

SEC. 50. 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 8 or 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. 51. Section 22754.5 of the Government Code is amended to read:

22754.5. (a) Notwithstanding Section 22754, for state employees in State Bargaining Unit 8 or 16 and members of State Bargaining Unit 8 or 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. 52. Section 22754.7 is added to the Government Code, to read:

22754.7. Notwithstanding any other provision of this part, the following provisions are also applicable to state employees in State Bargaining Unit 8:

(a) Paragraph (4) of subdivision (b) of Section 22754.

(b) Subdivision (a) of Section 22754.5.

SEC. 53. Section 22955 of the Government Code is amended to read:

22955. (a) Notwithstanding Sections 22953 and 22954, an employee in State Bargaining Unit 6, 8, 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. 54. Section 22955.5 is added to the Government Code, to read:

22955.5. Notwithstanding any other provision of this part, the provision of subdivision (a) of Section 22955 shall also apply to state employees in State Bargaining Unit 8.

SEC. 55. Section 22960.100 is added to the Government Code, to read:

22960.100. (a) Notwithstanding any other provision of law, the plan established by this part shall also apply to state peace officer and firefighter members in State Bargaining Unit 8 who have become subject to this part by a memorandum of understanding, as provided in Section 3517.5.

(b) The plan may also be provided to state peace officers or firefighters 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 part, provided that the Department of Personnel Administration has approved their inclusion for coverage under this part.

SEC. 56. 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 8 or 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. 57. Section 10344.1 of the Public Contract Code is amended 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 8 or 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. 58. The Department of Finance may adjust funding and reimbursement levels in the Department of Forestry and Fire Protection budget as necessary to meet the provisions of the memorandum of understanding approved by Section 2.

SEC. 59. The Department of Forestry and Fire Protection may increase its spending authority for reimbursement levels in an amount necessary to implement the memorandum of understanding approved by Section 2.

SEC. 60. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or 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 1025

An act to amend Section 1345 of, and to add Section 1351.2 to, the Health and Safety Code, relating to health care service plans.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1345 of the Health and Safety Code is amended to read:

1345. As used in this chapter:

(a) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or by radio, television, or similar communications media, published in connection with the offer or sale of plan contracts.

(b) "Basic health care services" means all of the following:

(1) Physician services, including consultation and referral.

(2) Hospital inpatient services and ambulatory care services.

(3) Diagnostic laboratory and diagnostic and therapeutic radiologic services.

(4) Home health services.

(5) Preventive health services.

(6) Emergency health care services, including ambulance services and out-of-area coverage.

(c) "Enrollee" means a person who is enrolled in a plan and who is a recipient of services from the plan.

(d) "Evidence of coverage" means any certificate, agreement, contract, brochure, or letter of entitlement issued to a subscriber or enrollee setting forth the coverage to which the subscriber or enrollee is entitled.

(e) "Group contract" means a contract which by its terms limits the eligibility of subscribers and enrollees to a specified group.

(f) "Health care service plan" or "specialized health care service plan" means either of the following:

(1) Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(2) Any person, whether located within or outside of this state, who solicits or contracts with a subscriber or enrollee in this state to pay for or reimburse any part of the cost of, or who undertakes to arrange or arranges for, the provision of health care services that are to be provided wholly or in part in a foreign country in return for a prepaid or periodic charge paid by or on behalf of the subscriber or enrollee.

(g) "License" means, and "licensed" refers to, a license as a plan pursuant to Section 1353.

(h) "Out-of-area coverage," for purposes of paragraph (6) of subdivision (b), means coverage while an enrollee is anywhere outside the service area of the plan, and shall also include coverage for urgently needed services to prevent serious deterioration of an enrollee's health resulting from unforeseen illness or injury for which treatment cannot be delayed until the enrollee returns to the plan's service area.

(i) "Provider" means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services.

(j) "Person" means any person, individual, firm, association, organization, partnership, business trust, foundation, labor organization, corporation, limited liability company, public agency, or political subdivision of the state.

(k) "Service area" means a geographical area designated by the plan within which a plan shall provide health care services.

(*l*) "Solicitation" means any presentation or advertising conducted by, or on behalf of, a plan, where information regarding the plan, or services offered and charges therefor, is disseminated for the purpose of inducing persons to subscribe to, or enroll in, the plan.

(m) "Solicitor" means any person who engages in the acts defined in subdivision (*l*) of this section.

(n) "Solicitor firm" means any person, other than a plan, who through one or more solicitors engages in the acts defined in subdivision (*l*) of this section.

(o) "Specialized health care service plan contract" means a contract for health care services in a single specialized area of health care, including dental care, for subscribers or enrollees, or which pays for or which reimburses any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(p) "Subscriber" means the person who is responsible for payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan.

(q) Unless the context indicates otherwise, "plan" refers to health care service plans and specialized health care service plans.

(r) "Plan contract" means a contract between a plan and its subscribers or enrollees or a person contracting on their behalf pursuant to which health care services, including basic health care services, are furnished; and unless the context otherwise indicates it includes specialized health care service plan contracts; and unless the context otherwise indicates it includes group contracts.

(s) All references in this chapter to financial statements, assets, liabilities, and other accounting items mean those financial statements and accounting items prepared or determined in accordance with generally accepted accounting principles, and fairly presenting the matters which they purport to present, subject to any specific requirement imposed by this chapter or by the commissioner.

SEC. 2. Section 1351.2 is added to the Health and Safety Code, to read:

1351.2. (a) If a health care service plan licensed under the laws of Mexico elects to operate a health care service plan in this state, the plan shall apply for licensure as a health care service plan under this chapter by filing an application for licensure in the form prescribed by the department and verified by an authorized representative of the applicant. The plan shall be subject to the provisions of this

chapter, and the rules adopted by the commissioner thereunder, as determined by the commissioner to be applicable. The application shall be accompanied by the fee prescribed by subdivision (a) of Section 1356 and shall demonstrate compliance with the following requirements:

(1) The plan is operating lawfully under the laws of Mexico.

(2) The plan offers and sells in this state only employer-sponsored group plan contracts exclusively for the benefit of citizens of Mexico legally employed in this state, and for the benefit of their dependents regardless of nationality, that pay for, reimburse the cost of, or arrange for the provision or delivery of health care services that are to be provided or delivered wholly in Mexico, except for the provision or delivery of those health care services set forth in subparagraphs (A) and (B) of paragraph (4).

(3) Solicitation of plan contracts in this state is made only through insurance brokers and agents licensed in this state or a third-party administrator licensed in this state, each of which is authorized by the plan to offer and sell plan group contracts.

(4) Group contracts provide, through a contract of insurance between the plan and an insurer admitted in this state, for the reimbursement of emergency and urgent care services provided out of area as required by subdivision (h) of Section 1345.

(5) All advertising, solicitation material, disclosure statements, evidences of coverage, and contracts are in compliance with the appropriate provisions of this chapter and the rules or orders of the commissioner. The commissioner shall require that each of these documents contain a legend in 10-point type, in both English and Spanish, declaring that the health care service plan contract provided by the plan may be limited as to benefits, rights, and remedies under state and federal law.

(6) All funds received by the plan from a subscriber are deposited in an account of a bank organized under the laws of this state or in an account of a national bank located in this state.

(7) The plan maintains a tangible net equity as required by this chapter and the rules of the commissioner, as calculated under United States generally accepted accounting principles, in the amount of a least one million dollars ($1,000,000). In lieu of an amount in excess of the minimum tangible net equity of one million dollars ($1,000,000), the plan may demonstrate a reasonable acceptable alternative reimbursement arrangement that the commissioner may in his or her discretion accept. The plan shall also maintain a fidelity bond and a surety bond as required by Section 1376 and the rules of the commissioner.

(8) The plan agrees to make all of its books and records, including the books and records of health care providers in Mexico, available to the commissioner in the form and at the time and place requested by the commissioner. Books and records shall be made available to the commissioner no later than 24 hours from the date of the request.

(9) The plan files a consent to service of process with the commissioner and agrees to be subject to the laws of this state and the United States in any investigation, examination, dispute, or other matter arising from the advertising, solicitation, or offer and sale of a plan contract, or the management or provision of health care services in this state or throughout the United States. The plan shall agree to notify the commissioner, immediately and in no case later than one business day, if it is subject to any investigation, examination, or administrative or legal action relating to the plan or the operations of the plan initiated by the government of Mexico or the government of any state of Mexico against the plan or any officer, director, security holder, or contractor owning 10 percent or more of the securities of the plan. The plan shall agree that in the event of conflict of laws in any action arising out of the license, the laws of California and the United States shall apply.

(10) The plan agrees that disputes arising from the group contracts involving group contract holders and providers of health care services in the United States shall be subject to the jurisdiction of the courts of this state and the United States.

(b) The plan shall pay the application processing fee and other fees and assessments set forth in Section 1356. The commissioner, by order, may designate provisions of this chapter and rules adopted thereunder that need not be applied to a health care service plan licensed under the laws of Mexico when consistent with the intent and purpose of this chapter, and in the public interest.

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 1026

An act to amend Section 1345 of the Health and Safety Code, relating to health care.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1345 of the Health and Safety Code is amended to read:

1345. As used in this chapter:

(a) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or by radio, television, or similar communications media, published in connection with the offer or sale of plan contracts.

(b) "Basic health care services" means all of the following:

(1) Physician services, including consultation and referral.

(2) Hospital inpatient services and ambulatory care services.

(3) Diagnostic laboratory and diagnostic and therapeutic radiologic services.

(4) Home health services.

(5) Preventive health services.

(6) Emergency health care services, including ambulance and ambulance transport services and out-of-area coverage. "Basic health care services" includes ambulance and ambulance transport services provided through the "911" emergency response system.

(c) "Enrollee" means a person who is enrolled in a plan and who is a recipient of services from the plan.

(d) "Evidence of coverage" means any certificate, agreement, contract, brochure, or letter of entitlement issued to a subscriber or enrollee setting forth the coverage to which the subscriber or enrollee is entitled.

(e) "Group contract" means a contract which by its terms limits the eligibility of subscribers and enrollees to a specified group.

(f) "Health care service plan" means any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(g) "License" means, and "licensed" refers to, a license as a plan pursuant to Section 1353.

(h) "Out-of-area coverage," for purposes of paragraph (6) of subdivision (b), means coverage while an enrollee is anywhere outside the service area of the plan, and shall also include coverage for urgently needed services to prevent serious deterioration of an enrollee's health resulting from unforeseen illness or injury for which treatment cannot be delayed until the enrollee returns to the plan's service area.

(i) "Provider" means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services.

(j) "Person" means any person, individual, firm, association, organization, partnership, business trust, foundation, labor

organization, corporation, limited liability company, public agency, or political subdivision of the state.

(k) "Service area" means a geographical area designated by the plan within which a plan shall provide health care services.

(*l*) "Solicitation" means any presentation or advertising conducted by, or on behalf of, a plan, where information regarding the plan, or services offered and charges therefor, is disseminated for the purpose of inducing persons to subscribe to, or enroll in, the plan.

(m) "Solicitor" means any person who engages in the acts defined in subdivision (*l*) of this section.

(n) "Solicitor firm" means any person, other than a plan, who through one or more solicitors engages in the acts defined in subdivision (*l*) of this section.

(o) "Specialized health care service plan contract" means a contract for health care services in a single specialized area of health care, including dental care, for subscribers or enrollees, or which pays for or which reimburses any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(p) "Subscriber" means the person who is responsible for payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan.

(q) Unless the context indicates otherwise, "plan" refers to health care service plans and specialized health care service plans.

(r) "Plan contract" means a contract between a plan and its subscribers or enrollees or a person contracting on their behalf pursuant to which health care services, including basic health care services, are furnished; and unless the context otherwise indicates it includes specialized health care service plan contracts; and unless the context otherwise indicates it includes group contracts.

(s) All references in this chapter to financial statements, assets, liabilities, and other accounting items mean those financial statements and accounting items prepared or determined in accordance with generally accepted accounting principles, and fairly presenting the matters which they purport to present, subject to any specific requirement imposed by this chapter or by the commissioner.

(t) This section shall become operative April 1, 1993.

SEC. 2. Section 1345 of the Health and Safety Code is amended to read:

1345. As used in this chapter:

(a) "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or by radio, television, or similar communications media, published in connection with the offer or sale of plan contracts.

(b) "Basic health care services" means all of the following:

(1) Physician services, including consultation and referral.

(2) Hospital inpatient services and ambulatory care services.

(3) Diagnostic laboratory and diagnostic and therapeutic radiologic services.

(4) Home health services.

(5) Preventive health services.

(6) Emergency health care services, including ambulance and ambulance transport services and out-of-area coverage. "Basic health care services" includes ambulance and ambulance transport services provided through the "911" emergency response system.

(c) "Enrollee" means a person who is enrolled in a plan and who is a recipient of services from the plan.

(d) "Evidence of coverage" means any certificate, agreement, contract, brochure, or letter of entitlement issued to a subscriber or enrollee setting forth the coverage to which the subscriber or enrollee is entitled.

(e) "Group contract" means a contract which by its terms limits the eligibility of subscribers and enrollees to a specified group.

(f) "Health care service plan" or "specialized health care service plan" means either of the following:

(1) Any person who undertakes to arrange for the provision of health care services to subscribers or enrollees, or to pay for or to reimburse any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(2) Any person, whether located within or outside of this state, who solicits or contracts with a subscriber or enrollee in this state to pay for or reimburse any part of the cost of, or who undertakes to arrange or arranges for, the provision of health care services that are to be provided wholly or in part in a foreign country in return for a prepaid or periodic charge paid by or on behalf of the subscriber or enrollee.

(g) "License" means, and "licensed" refers to, a license as a plan pursuant to Section 1353.

(h) "Out-of-area coverage," for purposes of paragraph (6) of subdivision (b), means coverage while an enrollee is anywhere outside the service area of the plan, and shall also include coverage for urgently needed services to prevent serious deterioration of an enrollee's health resulting from unforeseen illness or injury for which treatment cannot be delayed until the enrollee returns to the plan's service area.

(i) "Provider" means any professional person, organization, health facility, or other person or institution licensed by the state to deliver or furnish health care services.

(j) "Person" means any person, individual, firm, association, organization, partnership, business trust, foundation, labor organization, corporation, limited liability company, public agency, or political subdivision of the state.

(k) "Service area" means a geographical area designated by the plan within which a plan shall provide health care services.

(*l*) "Solicitation" means any presentation or advertising conducted by, or on behalf of, a plan, where information regarding the plan, or services offered and charges therefor, is disseminated for the purpose of inducing persons to subscribe to, or enroll in, the plan.

(m) "Solicitor" means any person who engages in the acts defined in subdivision (1) of this section.

(n) "Solicitor firm" means any person, other than a plan, who through one or more solicitors engages in the acts defined in subdivision (1) of this section.

(o) "Specialized health care service plan contract" means a contract for health care services in a single specialized area of health care, including dental care, for subscribers or enrollees, or which pays for or which reimburses any part of the cost for those services, in return for a prepaid or periodic charge paid by or on behalf of the subscribers or enrollees.

(p) "Subscriber" means the person who is responsible for payment to a plan or whose employment or other status, except for family dependency, is the basis for eligibility for membership in the plan.

(q) Unless the context indicates otherwise, "plan" refers to health care service plans and specialized health care service plans.

(r) "Plan contract" means a contract between a plan and its subscribers or enrollees or a person contracting on their behalf pursuant to which health care services, including basic health care services, are furnished; and unless the context otherwise indicates it includes specialized health care service plan contracts; and unless the context otherwise indicates it includes group contracts.

(s) All references in this chapter to financial statements, assets, liabilities, and other accounting items mean those financial statements and accounting items prepared or determined in accordance with generally accepted accounting principles, and fairly presenting the matters which they purport to present, subject to any specific requirement imposed by this chapter or by the commissioner.

SEC. 3. Section 2 of this bill incorporates amendments to Section 1345 of the Health and Safety Code proposed by both this bill and SB 1658. 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 1345 of the Health and Safety Code, and (3) this bill is enacted after SB 1658, in which case Section 1 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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 1027

An act to amend Section 7205 of, and to add Section 7204.03 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 7204.03 is added to the Revenue and Taxation Code, to read:

7204.03. (a) Notwithstanding any other provision of this part, in the case of retail sales of jet fuel that are, in accordance with paragraph (2) of subdivision (b) of Section 7205, consummated at the point of delivery of that jet fuel to an aircraft at a multijurisdictional airport, the sales tax revenues collected by the board pursuant to this part with respect to those sales shall be transmitted by the board in accordance with subdivision (b). For purposes of this section, a "multijurisdictional airport" is an airport that is owned or operated by a city, county, or city and county that meets both of the following conditions:

(1) The owning or operating city, county, or city and county imposes a local sales tax pursuant to an ordinance adopted pursuant to this part.

(2) The owning or operating city, county, or city or county is different from the city, county, or city and county in which the airport is located.

(b) (1) Except as provided in paragraph (2), the sales taxes collected by the board pursuant to this part with respect to retail sales of jet fuel described in subdivision (a) shall be transmitted by the board in accordance with the following:

(A) One-half to the county or city and county in which the point of delivery to the aircraft is located, less the amount transmitted to a city pursuant to subparagraph (B), if any; and one-half to the county or city and county that owns or operates the airport or to the county in which the city that owns or operates the airport is located, less the amount transmitted to a city pursuant to subparagraph (C), if any.

(B) If the multijurisdictional airport is located in a city imposing a local sales tax pursuant to an ordinance adopted pursuant to this part, the board shall transmit to that city that amount of sales taxes collected by the board with respect to retail sales of fuel described in subdivision (a) that is based on 50 percent of the rate set by that city's ordinance.

(C) If the multijurisdictional airport is owned or operated by a city imposing a local sales tax pursuant to an ordinance adopted pursuant to this part, the board shall transmit to that city that amount of sales taxes collected by the board with respect to retail sales of fuel described in subdivision (a) that is based on 50 percent of the rate set by that city's ordinance.

(2) Notwithstanding paragraph (1), both of the following shall apply:

(A) In the case of retail sales of jet fuel as described in subdivision (a) that are consummated at San Francisco International Airport, one-half of the sales taxes collected by the board pursuant to this part with respect to those sales shall be transmitted by the board to the City and County of San Francisco, and one-half of the sales taxes collected by the board pursuant to this part with respect to those sales shall be transmitted by the board to the County of San Mateo.

(B) In the case of retail sales of jet fuel as described in subdivision (a) that are consummated at Ontario International Airport, the board shall transmit sales taxes collected by the board pursuant to this part with respect to those sales in accordance with both of the following:

(i) All of the sales taxes that are derived from a local sales tax rate imposed by the City of Ontario shall be transmitted to that city.

(ii) All of the sales taxes that are derived from a local sales tax rate imposed by the County of San Bernardino shall be allocated to that county.

SEC. 2. Section 7205 of the Revenue and Taxation Code is amended to read:

7205. (a) For the purpose of a sales tax imposed by an ordinance adopted pursuant to this part, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his or her agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from those sales shall include delivery charges, when those charges are subject to the state sales and use tax, regardless of the place to which delivery is made.

(b) (1) In the event a retailer has no permanent place of business in the state or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of a sales tax imposed by an ordinance adopted pursuant to this part shall, subject to paragraph (2), be determined under rules and regulations to be prescribed and adopted by the board.

(2) In the case of a sale of jet fuel, the place at which the retail sale of that jet fuel is consummated for the purpose of a sales tax imposed by an ordinance adopted pursuant to this part is the point of the delivery of that jet fuel to the aircraft, if both of the following conditions are met:

(A) The principal negotiations for the sale are conducted in this state.

(B) The retailer has more than one place of business in the state.

SEC. 3. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution to local sales taxes imposed with respect to sales of jet fuel that are consummated at San Francisco International Airport or Ontario International Airport because of the unique jurisdictional and fiscal concerns raised by the location, ownership, and operation of those airports.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held to be invalid, that invalidity shall not affect any other provision or application of this act that can be given effect without the invalid provision or application.

SEC. 5. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, the provisions of this act shall become operative on January 1, 1999.

CHAPTER 1028

An act relating to local government, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. (a) The Legislature hereby finds and declares that counties without incorporated cities must provide municipal services that are generally the responsibility of cities in other counties. However, the current formulas for allocation of Vehicle License Fee, Use Fuel Tax, and Diesel Fuel Tax revenues do not recognize this additional responsibility.

(b) In order to equalize funding for counties that do not contain incorporated cities without affecting revenue allocations to cities, the sum of one hundred forty-seven thousand dollars ($147,000) is hereby appropriated from the General Fund to the Controller for allocation to counties that do not contain incorporated cities. The Controller shall allocate these funds to the qualifying counties according to the

proportion of the population of all the qualifying counties that the population of each of those counties represents.

(c) It is the intent of the Legislature to annually appropriate at least one hundred forty-seven thousand dollars ($147,000) in subsequent years for the purposes specified in this section.

CHAPTER 1029

An act to amend Sections 1540 and 1571 of the Code of Civil Procedure, relating to unclaimed property.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1540 of the Code of Civil Procedure is amended to read:

1540. (a) Any person, excluding another state, who claims an interest in property paid or delivered to the Controller under this chapter may file a claim to the property or to the net proceeds from its sale. The claim shall be on a form prescribed by the Controller and shall be verified by the claimant.

(b) The Controller shall consider each claim within 90 days after it is filed and may hold a hearing and receive evidence. The Controller shall give written notice to the claimant if he or she denies the claim in whole or in part. The notice may be given by mailing it to the address, if any, stated in the claim as the address to which notices are to be sent. If no address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either an address to which notices are to be sent or an address of the claimant.

(c) The Controller shall add interest at the rate of 5 percent compounded annually or the current interest rate received upon deposits held in the Pooled Money Investment Account, whichever is lower, to the amount of any claim paid the owner under this section for the period the property was on deposit in the Unclaimed Property Fund. No interest shall be payable for any period prior to January 1, 1977.

(d) Any holder who pays to the owner, property that has escheated to the state and that, if claimed from the Controller, would be subject to subdivision (c) may add interest as provided in subdivision (c). This added interest shall be repaid to the holder by the Controller in the same manner as the principal.

(e) For the purposes of this section, "owner" means the person who had legal right to the property prior to its escheat, his or her heirs, or his or her legal representative.

(f) Following a public hearing, the Controller shall adopt guidelines and forms that shall provide specific instructions to assist owners in filing claims pursuant to this article.

SEC. 2. Section 1571 of the Code of Civil Procedure is amended to read:

1571. (a) The Controller may at reasonable times and upon reasonable notice examine the records of any person if the Controller has reason to believe that the person is a holder who has failed to report property that should have been reported pursuant to this chapter.

(b) When requested by the Controller, the examination shall be conducted by any licensing or regulating agency otherwise empowered by the laws of this state to examine the records of the holder. For the purpose of determining compliance with this chapter, the Commissioner of Financial Institutions is vested with full authority to examine the records of any banking organization and any savings association doing business within this state but not organized under the laws of or created in this state.

(c) Following a public hearing, the Controller shall adopt guidelines as to the policies and procedures governing the activity of third-party auditors who are hired by the Controller.

(d) Following a public hearing, the Controller shall adopt guidelines, on or before July 1, 1999, establishing forms, policies, and procedures to enable a person to dispute or appeal the results of any record examination conducted pursuant to this section.

SEC. 3. This act shall not be construed to affect any civil action or proceeding pending on or before January 1, 1999. This act shall only apply prospectively.

CHAPTER 1030

An act to amend Sections 4533, 4533.1, 4534, 4535.1, 4535.2, 7084, and 14840 of, and to add Section 14838.5 to, the Government Code, and to amend Section 12102 of the Public Contract Code, relating to state contracts.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 4533 of the Government Code is amended to read:

4533. Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies who demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in a distressed area.

SEC. 2. Section 4533.1 of the Government Code is amended to read:

4533.1. Where a bidder complies with the provisions of Section 4533, or the worksite or worksites where at least 50 percent of the labor required to perform the contract is within commuting distance of a distressed area, the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons with high risk of unemployment equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons with high risk of unemployment equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons with high risk of unemployment equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons with high risk of unemployment equal to 20 or more percent of its work force during the period of contract performance.

SEC. 3. Section 4534 of the Government Code is amended to read:

4534. In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies who demonstrate and certify under penalty of perjury that not less than 90 percent of the total labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in a distressed area.

SEC. 4. Section 4535.1 of the Government Code is amended to read:

4535.1. A business which requests and is given the preference provided for in Section 4533, 4533.1, 4534, or 4534.1 by reason of having furnished a false certification, and which by reason of that certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(a) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(b) In addition to the amount specified in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(c) Be ineligible to directly or indirectly transact any business with the state for a period of not less than three months and not more than 24 months.

Prior to the imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

SEC. 5. Section 4535.2 of the Government Code is amended to read:

4535.2. (a) The maximum preference and incentive a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference and incentive cost under this chapter exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences and incentives granted pursuant to this chapter and any other provision of law exceed one hundred thousand dollars($100,000). In those cases where the 15-percent cumulated preference and incentive cost would exceed the one hundred thousand dollar ($100,000) maximum preference and incentive cost limit, the one hundred thousand dollar ($100,000) maximum preference and incentive cost limit shall apply.

(b) Notwithstanding the provisions of this chapter, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this chapter, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference and incentive.

SEC. 8. Section 7084 of the Government Code is amended to read:

7084. (a) Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies that demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in an enterprise zone.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall

award a 5-percent preference on the price submitted by California-based companies that demonstrate and certify under penalty of perjury that not less than 90 percent of the labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in an enterprise zone.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 20 or more percent of its work force during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder incentive.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to directly or indirectly transact any business with the state for a period of not less than three months and not more than 24 months.

(2) Prior to the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section an enterprise zone shall also mean any enterprise zone or program area previously authorized under any other provision of state law.

(i) As used in this section, "enterprise zone eligible employees" means employees who meet any of the requirements of clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74, or clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 23622.5 of the Revenue and Taxation Code.

SEC. 9. Section 7084 of the Government Code is amended to read:

7084. (a) Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies that demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in an enterprise zone.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies that demonstrate and certify under penalty of perjury that not less than 90 percent of the labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in an enterprise zone.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons living within a targeted

employment area or are enterprise zone eligible employees equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 20 or more percent of its work force during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder incentive.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a), (b), or (c) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to directly or indirectly transact any business with the state for a period of not less than three months and not more than 24 months.

(2) Prior to the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section an enterprise zone shall also mean any enterprise zone or program area previously authorized under any other provision of state law.

(i) As used in this section, "enterprise zone eligible employees" means employees who meet any of the requirements of clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74, or clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 23622.5 of the Revenue and Taxation Code.

SEC. 10. Section 14838.5 is added to the Government Code, to read:

14838.5. (a) Notwithstanding the advertising and bidding requirements of Chapter 6 (commencing with Section 14825) and Section 10302, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than two thousand five hundred dollars ($2,500), but less than fifty thousand dollars ($50,000), to a small business, as long as the agency obtains price quotations from two or more small businesses.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible small business.

(c) If the estimated cost to the state is less than two thousand five hundred dollars ($2,500) and for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 11. Section 14840 of the Government Code is amended to read:

14840. The department shall submit an annual report to the Legislature no later than January 1 of each year commencing in 1975 containing the following information:

(a) Upon request, an up-to-date list of eligible small business bidders by general procurement and construction contract categories, noting company names and addresses.

(b) By general procurement and construction contract categories, statistics comparing the small business contract participation dollars to the total state contract participation dollars.

(c) By awarding department and general procurement and construction categories, statistics comparing the small business contract participation dollars to the total state contract participation dollars.

(d) Any recommendations for changes in statutes or state policies to improve opportunities for small business.

(e) A statistical summary of small businesses certified for state contracting by the number of employees at the business for each of the following categories: 0–25, 26–50, 51–75, and 76–100.

(f) To the extent feasible, beginning in the year 2002, the number of contracts awarded by the department in the categories specified in subdivision (e).

SEC. 12. Section 12102 of the Public Contract Code is amended to read:

12102. The Department of Information Technology and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of electronic data processing and telecommunications goods and services.

(a) Acquisition of electronic data processing and telecommunications goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of electronic data processing and telecommunications goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for procurement of electronic data processing and telecommunications services, including systems integration, shall provide for the selection of a vendor on an objective basis not limited to cost alone.

(1) The Department of General Services shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient,

including but not limited to consideration of comprehensive statements in the request for proposals of the business needs and governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to procurements, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a single rather than multiple proposals.

(2) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the procurement shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official procurement file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.

(c) The acquisition of hardware purchased independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.

(d) The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(e) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for electronic data processing and telecommunications goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(f) Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.

(g) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional

items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

Further, it is the intent of the Legislature that, if a state electronic data processing advisory committee or a state telecommunications advisory committee is established by the Governor, the Director of Information Technology, or the Director of General Services, the policies and procedures developed by the Director of Information Technology and the Director of General Services in accordance with this chapter shall be submitted to that committee, including vendor representatives, for review and comment, and that the comment be considered by both departments prior to the adoption of any policy or procedure. It is also the intent of the Legislature that this section shall apply to the Department of General Services Information Technology Customer Council.

(h) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to the last day to protest, any vendor who has submitted an offer files a protest with the department against the awarding of the contract or purchase order on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract or purchase order shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting vendor shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(i) Electronic data processing and telecommunications goods which have been determined to be surplus to state needs shall be disposed of in a manner which will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(j) A vendor may be excluded from bid processes if the vendor's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any vendor excluded in accordance with this section shall be reinstated as a qualified vendor at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the vendor's exclusion have been corrected.

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.

SEC. 14. Section 8 of this act shall become effective only if AB 3 and this act are chaptered and become operative on or before January 1, 1999, in which case Section 9 of this act shall not become operative.

CHAPTER 1031

An act to amend Section 49063 of, and to add Chapter 6.6 (commencing with Section 49091.10) to Part 27 of, the Education Code, relating to schools.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 49063 of the Education Code is amended to read:

49063. School districts shall notify parents in writing of their rights under this chapter upon the date of the pupil's initial enrollment, and thereafter at the same time as notice is issued pursuant to Section 48980. The notice shall be, insofar as is practicable, in the home language of the pupil. The notice shall take a form which reasonably notifies parents of the availability of the following specific information:

(a) The types of pupil records and information contained therein which are directly related to students and maintained by the institution.

(b) The position of the official responsible for the maintenance of each type of record.

(c) The location of the log or record required to be maintained pursuant to Section 49064.

(d) The criteria to be used by the district in defining "school officials and employees" and in determining "legitimate educational

interest" as used in Section 49064 and paragraph (1) of subdivision (a) of Section 49076.

(e) The policies of the institution for reviewing and expunging those records.

(f) The right of the parent to access to pupil records.

(g) The procedures for challenging the content of pupil records.

(h) The cost if any which will be charged to the parent for reproducing copies of records.

(i) The categories of information which the institution has designated as directory information pursuant to Section 49073.

(j) Any other rights and requirements set forth in this chapter, and the right of the parent to file a complaint with the United States Department of Health, Education, and Welfare concerning an alleged failure by the district to comply with the provisions of Section 438 of the General Education Provisions Act (20 U.S.C.A. Sec. 1232g).

(k) The availability of the prospectus prepared pursuant to Section 49091.14.

SEC. 2. Chapter 6.6 (commencing with Section 49091.10) is added to Part 27 of the Education Code, to read:

CHAPTER 6.6. THE EDUCATION EMPOWERMENT ACT OF 1998

Article 1. Parental Review

49091.10. (a) All primary supplemental instructional materials and assessments, including textbooks, teacher's manuals, films, tapes, and software shall be compiled and stored by the classroom instructor and made available promptly for inspection by a parent or guardian in a reasonable timeframe or in accordance with procedures determined by the governing board of the school district.

(b) A parent or guardian has the right to observe instruction and other school activities that involve his or her child in accordance with procedures determined by the governing board of the school district to ensure the safety of pupils and school personnel and to prevent undue interference with instruction or harassment of school personnel. Reasonable accommodation of parents and guardians shall be considered by the governing board of the school district. Upon written request by the parent or guardian, school officials shall arrange for the parental observation of the requested class or classes or activities by that parent or guardian in a reasonable timeframe and in accordance with procedures determined by the governing board of the school district.

49091.12. (a) A pupil may not be compelled to affirm or disavow any particular personally or privately held world view, religious doctrine, or political opinion. This section does not relieve pupils of any obligation to complete regular classroom assignments.

(b) Nothing in this chapter shall be construed to affect a pupil's right or ability to obtain confidential medical care or confidential counseling relating to the diagnosis or treatment of a drug- or alcohol-related problem, or mental health treatment or counseling on an outpatient basis, without the consent of his or her parent or guardian. Nothing in this chapter shall be construed to restrict the authority of school officials or law enforcement officials to investigate, or intervene in, cases of suspected child abuse.

(c) A pupil may not be tested for a behavioral, mental, or emotional evaluation without the informed written consent of his or her parent or guardian.

(d) A general consent, including medical consent used to approve admission to or involvement in, a special education or remedial program or regular school activity, does not constitute written consent under this section.

49091.14. The curriculum, including titles, descriptions, and instructional aims of every course offered by a public school, shall be compiled at least once annually in a prospectus. Each schoolsite shall make its prospectus available for review upon request. When requested, the prospectus shall be reproduced and made available. School officials may charge for the prospectus an amount not to exceed the cost of duplication.

49091.16. It is the intent of the Legislature to encourage pupil-school-parent compacts that are voluntary.

49091.18. Notwithstanding any provision of law to the contrary, a school may not require a pupil or a pupil's family to submit to or participate in any of the following:

(a) Any assessment, analysis, evaluation, or monitoring of the quality or character of the pupil's home life.

(b) Any form of parental screening or testing.

(c) Any nonacademic home-based counseling program.

(d) Parent training.

(e) Any prescribed family education service plan.

(f) Nothing in this section shall be construed as preventing the screening, testing, or training of public school employees.

49091.19. No provision of this chapter shall be construed as restricting teachers in the assignment of homework.

Article 2. Teacher Rights

49091.24. A teacher shall have the right to refuse to submit to any evaluation or survey conducted by the school district concerning the following:

(a) Personal values, attitudes, and beliefs.

(b) Sexual orientation.

(c) Political affiliations or opinions.

(d) Critical appraisals of other individuals with whom the teacher has a family relationship.

(e) Religious affiliations or beliefs.

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 1032

An act to amend Section 340.1 of the Code of Civil Procedure, relating to commencement of actions.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 340.1 of the Code of Civil Procedure is amended to read:

340.1. (a) In an action for recovery of damages suffered as a result of childhood sexual abuse, the time for commencement of the action shall be within eight years of the date the plaintiff attains the age of majority or within three years of the date the plaintiff discovers or reasonably should have discovered that psychological injury or illness occurring after the age of majority was caused by the sexual abuse, whichever period expires later, for any of the following actions:

(1) An action against any person for committing an act of childhood sexual abuse.

(2) An action for liability against any person or entity who owed a duty of care to the plaintiff, where a wrongful or negligent act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.

(3) An action for liability against any person or entity where an intentional act by that person or entity was a legal cause of the childhood sexual abuse which resulted in the injury to the plaintiff.

(b) No action described in paragraph (2) or (3) of subdivision (a) may be commenced on or after the plaintiff's 26th birthday.

(c) "Childhood sexual abuse" as used in this section includes any act committed against the plaintiff that occurred when the plaintiff

was under the age of 18 years and that would have been proscribed by Section 266j of the Penal Code; Section 285 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 286 of the Penal Code; subdivision (a) or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 288a of the Penal Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code; Section 647.6 of the Penal Code; or any prior laws of this state of similar effect at the time the act was committed. Nothing in this subdivision limits the availability of causes of action permitted under subdivision (a), including causes of action against persons or entities other than the alleged perpetrator of the abuse.

(d) Nothing in this section shall be construed to alter the otherwise applicable burden of proof, as defined in Section 115 of the Evidence Code, that a plaintiff has in a civil action subject to this section.

(e) Every plaintiff 26 years of age or older at the time the action is filed shall file certificates of merit as specified in subdivision (f).

(f) Certificates of merit shall be executed by the attorney for the plaintiff and by a licensed mental health practitioner selected by the plaintiff declaring, respectively, as follows, setting forth the facts which support the declaration:

(1) That the attorney has reviewed the facts of the case, that the attorney has consulted with at least one mental health practitioner who is licensed to practice and practices in this state and who the attorney reasonably believes is knowledgeable of the relevant facts and issues involved in the particular action, and that the attorney has concluded on the basis of that review and consultation that there is reasonable and meritorious cause for the filing of the action. The person consulted may not be a party to the litigation.

(2) That the mental health practitioner consulted is licensed to practice and practices in this state and is not a party to the action, that the practitioner is not treating and has not treated the plaintiff, and that the practitioner has interviewed the plaintiff and is knowledgeable of the relevant facts and issues involved in the particular action, and has concluded, on the basis of his or her knowledge of the facts and issues, that in his or her professional opinion there is a reasonable basis to believe that the plaintiff had been subject to childhood sexual abuse.

(3) That the attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificates required by paragraphs (1) and (2) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificates required by paragraphs (1) and (2) shall be filed within 60 days after filing the complaint.

(g) Where certificates are required pursuant to subdivision (e), the attorney for the plaintiff shall execute a separate certificate of merit for each defendant named in the complaint.

(h) In any action subject to subdivision (e), no defendant may be served, nor shall the duty to serve a defendant with process attach, until the court has reviewed the certificates of merit filed pursuant to subdivision (f) with respect to that defendant, and has found, in camera, based solely on those certificates of merit, that there is reasonable and meritorious cause for the filing of the action against that defendant. At that time, the duty to serve that defendant with process shall attach.

(i) A violation of this section may constitute unprofessional conduct and may be the grounds for discipline against the attorney.

(j) The failure to file certificates in accordance with this section shall be grounds for a demurrer pursuant to Section 430.10 or a motion to strike pursuant to Section 435.

(k) In any action subject to subdivision (e), no defendant may be named except by "Doe" designation in any pleadings or papers filed in the action until there has been a showing of corroborative fact as to the charging allegations against that defendant.

(*l*) At any time after the action is filed, plaintiff may apply to the court for permission to amend the complaint to substitute the name of the defendant or defendants for the fictitious designation, as follows:

(1) The application shall be accompanied by a certificate of corroborative fact executed by the attorney for the plaintiff. The certificate shall declare that the attorney has discovered one or more facts corroborative of one or more of the charging allegations against a defendant or defendants, and shall set forth in clear and concise terms the nature and substance of the corroborative fact. If the corroborative fact is evidenced by the statement of a witness or the contents of a document, the certificate shall declare that the attorney has personal knowledge of the witness's statement or of the contents of the document, and the identity and location of the witness or document shall be included in the certificate. For purposes of this section, a fact is corroborative of an allegation if it confirms or supports the allegation. The opinion of any mental health practitioner concerning the plaintiff shall not constitute a corroborative fact for purposes of this section.

(2) Where the application to name a defendant is made prior to that defendant's appearance in the action, neither the application nor the certificate of corroborative fact by the attorney shall be served on the defendant or defendants, nor on any other party or their counsel of record.

(3) Where the application to name a defendant is made after that defendant's appearance in the action, the application shall be served on all parties and proof of service thereof provided to the court, but

the certificate of corroborative fact by the attorney shall not be served on any party or their counsel of record.

(m) The court shall review the application and the certificate of corroborative fact in camera and, based solely on the certificate and any reasonable inferences to be drawn therefrom, shall, if one or more facts corroborative of one or more of the charging allegations against a defendant has been shown, order that the complaint may be amended to substitute the name of the defendant or defendants.

(n) The court shall keep under seal and confidential from the public and all parties to the litigation other than the plaintiff any and all certificates of corroborative fact filed pursuant to subdivision (*l*).

(o) Upon the favorable conclusion of the litigation with respect to any defendant for whom a certificate of merit was filed or for whom a certificate of merit should have been filed pursuant to this section, the court may, upon the motion of a party or upon the court's own motion, verify compliance with this section by requiring the attorney for the plaintiff who was required by subdivision (f) to execute the certificate to reveal the name, address, and telephone number of the person or persons consulted with pursuant to subdivision (f) that were relied upon by the attorney in preparation of the certificate of merit. The name, address, and telephone number shall be disclosed to the trial judge in camera and in the absence of the moving party. If the court finds there has been a failure to comply with this section, the court may order a party, a party's attorney, or both, to pay any reasonable expenses, including attorney's fees, incurred by the defendant for whom a certificate of merit should have been filed.

(p) The amendments to this section enacted at the 1990 portion of the 1989–90 Regular Session shall apply to any action commenced on or after January 1, 1991, including any action otherwise barred by the period of limitations in effect prior to January 1, 1991, thereby reviving those causes of action which had lapsed or technically expired under the law existing prior to January 1, 1991.

(q) The Legislature declares that it is the intent of the Legislature, in enacting the amendments to this section enacted at the 1994 portion of the 1993–94 Regular Session, that the express language of revival added to this section by those amendments shall apply to any action commenced on or after January 1, 1991.

(r) Nothing in the amendments to this section enacted at the 1998 portion of the 1997–98 Regular Session is intended to create a new theory of liability.

CHAPTER 1033

An act relating to class size reduction, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. (a) Any unexpended and unencumbered funds appropriated for the purposes of Chapter 6.1 (commencing with Section 52120) of Part 28 of the Education Code, Chapter 19 (commencing with Section 17200) of Part 10 of the Education Code, and Chapter 23 (commencing with Section 17770) of Part 10 of the Education Code, as that chapter read prior to June 30, 1999, for the 1996–97 and 1997–98 fiscal years shall be made available, on a one-time basis, to assist eligible school districts. The total amount of available funds shall be equally divided between the priorities described in paragraphs (1) and (2), as follows:

(1) To assist eligible school districts in implementing approved comprehensive plans to mitigate the facilities impact of class size reduction, as described in Section 52122.7, for the 1997–98 school year. Each school district that elects to apply for funding under this subdivision shall certify that all funds received will meet the conditions of the plan or an amended plan approved by the State Board of Education that meets the criteria of Section 52122.7. Funds approved pursuant to this paragraph shall be used solely for the purposes of facilities related costs associated with implementation of the Class Size Reduction Program at schools with pupil density of at least 200 pupils per acre, as described in Section 52122.6.

(2) To assist school districts that have fulfilled both of the following criteria:

(A) Fully implemented three grade levels of class size reduction in the 1996–97 fiscal year.

(B) Expanded the Class Size Reduction Program in the 1997–98 fiscal year.

(b) A school district that meets the requirements described in paragraph (2) of subdivision (a) shall be eligible to receive forty thousand dollars ($40,000) for each class established for the purpose of expanding the Class Size Reduction Program in the 1997–98 fiscal year, beyond the number of new classes established in the 1996–97 fiscal year and for classes not previously funded.

(c) Each school district that elects to apply for funding under paragraph (2) of subdivision (a) shall submit an application, on forms and in a manner prescribed by the Superintendent of Public Instruction, to the Superintendent of Public Instruction. The application shall include the school district's certification of each of the following items as a condition of apportionment:

(1) Certification of the number of new Option One classes established by the school district pursuant to the Class Size Reduction Program solely for the purpose of reducing class size in kindergarten and grades 1 to 3, inclusive, in the 1996–97 fiscal year.

(2) Certification that the school district fully implemented the Class Size Reduction Program in the 1996–97 fiscal year.

(3) Certification of the number of new Option One classes established by the school district pursuant to the Class Size Reduction Program solely for the purpose of reducing class size in kindergarten and grades 1 to 3, inclusive, in the 1997–98 fiscal year.

(4) Certification that, for the grades in which classes were reduced, the district meets eligibility requirements pursuant to subdivision (b) of Section 52122.1.

(d) Funds allocated to school districts pursuant to this section shall be expended solely for the purpose of facilities-related costs associated with the implementation of the Class Size Reduction Program.

(e) Funds may not be allocated to school districts pursuant to this section for the purpose of assisting school districts in implementing Option Two, as described in paragraph (2) of subdivision (b) of Section 52122.

(f) If available funds are insufficient to fund all applicant school districts pursuant to this section, a prorated reduction shall be applied to the amount described in subdivision (b) for each class.

(g) If funds remain available after funding all eligible applications pursuant to this section, the Superintendent of Public Instruction shall apportion the remaining funding in increments of forty thousand dollars ($40,000) to eligible school districts for each new Option One class established in the 1997–98 school year for which the district had not previously received funding pursuant to Section 52122.1.

(h) It is the intent of the Legislature that, for each new teaching station a school district establishes for the purpose of class size reduction for which the school district did not receive a facilities grant under this section or any previous appropriation for this purpose, the school district shall be eligible for facilities funding from any state general obligation bond measure approved for that purpose.

CHAPTER 1034

An act to add Section 18104 to the Education Code, relating to library services.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 18104 is added to the Education Code, to read:

18104. (a) It is in the interest of the state to authorize the Livermore Valley Joint Unified School District to enter into a joint-use arrangement with another public entity for operation of a joint-use library facility located on land, in close proximity to a schoolsite, owned by the school district or by another public agency.

(b) Notwithstanding any other provision of law to the contrary, the Livermore Valley Joint Unified School District may enter into a contract with the county, the city, or other appropriate entity having responsibility for the provision of public library services, in which the district is located for the purpose of operating a joint-use library facility at a schoolsite owned by the district or at a site, within one mile of the schoolsite, owned by the school district, the county, the city, or other appropriate entity having responsibility for the provision of public library services in that area.

(c) The Livermore Valley Joint Unified School District may apply for the lease-purchase of a project that includes a library facility, funded entirely with local funds, which facility, if constructed, would be of sufficient size to accommodate the requirements of a joint-use library for which the district has entered into a contract, pursuant to subdivision (b).

(d) The contract specified in subdivision (b) shall contain at least all of the following:

(1) Agreement that the county, city, or other appropriate entity shall deposit with the school district an amount equal to the total cost of any space in the proposed library facility that is beyond the needs of the district, prior to the signing of the construction contract for the project. The deposit shall not be refundable, except to the extent that it may prove subsequently to be in excess of the actual total cost of the space that is beyond the needs of the district.

(2) Agreement between the district and the county, the city, or other appropriate entity regarding staffing, maintenance, materials acquisition, and other matters related to the administration and operating costs of the joint-use facility. The agreement shall provide that the school district shall not be responsible for any costs that are not related to the school use of the joint-use facility.

(3) Agreement between the district and the county, the city, or other appropriate entity regarding the procedure for amendment or termination of the contract, including the disposition of materials housed in the joint-use facility should termination of the contract occur.

(e) A joint-use facility constructed pursuant to this section shall comply with all requirements applicable to school facilities.

SEC. 2. Due to the unique circumstances concerning the Livermore Valley Joint Unified School District, it is necessary that enhanced flexibility in development of joint-use library facilities be provided, and the Legislature finds and declares that a general

statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution.

CHAPTER 1035

An act to amend Sections 5703, 53656, 91503, and 91521.3 of, and to repeal Sections 15453, 15453.5, 15453.6, 15453.7, 15453.8, 15453.9, 15453.10, and 15454 of, the Government Code, relating to state financing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 5703 of the Government Code is amended to read:

5703. (a) Except as provided in subdivisions (b), (c), and (d), the Treasurer, in exercising the duties of agent for offering and selling bonds, whose duties include, among others, establishing the timing of a sale, preparation or approval of the documentation for the sale, sole authority to select the underwriters for negotiating the sale, and executing the bond purchase agreement on behalf of the state or the state's agencies, is responsible for developing and implementing a competitive process for selection of underwriters for negotiated offerings of bonds. The competitive process may be conducted on a issue-by-issue basis or to establish one or more pools of underwriters for various types of issues. The competitive process shall have at least all of the following features:

(1) Solicitation of written qualifications from at least 20 underwriting firms.

(2) Consideration of the goals for minority and women business enterprise participation in professional bond services contracts.

(3) The written submissions shall be available for inspection at the office of the Treasurer for a period of at least six months.

(4) If a pool of underwriters is established, the competitive process shall be repeated at least every 24 months to reestablish the pool of underwriters.

(b) For negotiated offerings of bonds by state financing authorities that act as conduits to provide financing to other public, nonprofit, or private organizations, the Treasurer shall use the competitive process described in subdivision (a) to establish one or more pools of underwriters for each financing authority. The Treasurer may make additions to a pool without competitive solicitation, on a case-by-case determination upon the recommendation of a project applicant, where the Treasurer finds

that the underwriter to be added has provided significant services to the project applicant with the expectation of compensation for those services from underwriting the revenue bonds which will fund the applicant's project.

(c) The Treasurer may select underwriters for a negotiated sale of bonds by means other than as described in subdivision (a) if the Treasurer makes a written finding that extraordinary market conditions do not allow enough time to comply with subdivision (a) without risking financial detriment to the state.

(d) Subdivisions (a), (b), and (c) shall not apply to the issuance of state bonds for which the Treasurer is precluded by statute from selecting underwriters.

(e) For negotiated sales, the Treasurer shall maintain records of all cost information pertinent to the initial offering of all state bonds, except that in the case of bonds issued by a state financing authority, as described in subdivision (b), the issuing state financing authority shall instead be responsible for maintaining the same cost information on bonds it has issued. The information shall include, but not be limited to, all of the following:

(1) All amounts paid out of bond proceeds to the underwriter, detailed by management fee, takedown, risk, and underwriter's expenses.

(2) All costs paid out of bond proceeds to rating agencies for rating of the bonds.

(3) All fees paid out of bond proceeds to bond counsels, trustees, or financial advisers relating to the initial offering of the bonds.

(4) The interest rate to be paid on the bonds.

(f) For competitive sales, the Treasurer shall maintain records of all bids submitted and the documentation of bid verifications including the terms of sale and the calculation of net interest cost or true interest cost.

(g) The State Auditor shall audit the cost records required to be maintained pursuant to subdivision (e) and conduct a review of the records required to be maintained pursuant to subdivision (f).

(h) The State Auditor shall report whether this section is being fully implemented. The State Auditor shall make cost and interest rate comparisons with similar initial bond offerings of other states where possible. The State Auditor shall submit a report to the Legislature on March 1, 1993, and March 1, 1995, for bonds sold during the two calendar years immediately preceding the year in which the report is due.

(i) Section 10295 of, and Article 4 (commencing with Section 10335) and Article 5 (commencing with Section 10355) of Chapter 2 of Part 2 of Division 2 of, the Public Contract Code are not applicable to agreements entered into by the Treasurer in connection with the sale of any evidence of indebtedness.

SEC. 2. Section 15453 of the Government Code is repealed.

SEC. 3. Section 15453.5 of the Government Code is repealed.

SEC. 4. Section 15453.6 of the Government Code is repealed.

SEC. 5. Section 15453.7 of the Government Code is repealed.

SEC. 6. Section 15453.8 of the Government Code is repealed.

SEC. 7. Section 15453.9 of the Government Code is repealed.

SEC. 8. Section 15453.10 of the Government Code is repealed.

SEC. 9. Section 15454 of the Government Code is repealed.

SEC. 10. Section 53656 of the Government Code is amended to read:

53656. (a) At the time the treasurer enters into a contract with the depository pursuant to Section 53649, he or she shall authorize the agent of depository designated by the depository, but including the trust department of the depository only when acceptable to both the treasurer and the depository, to hold securities of the depository in accordance with this article to secure the deposit of the local agency.

(b) Only those trust companies and trust departments, or the Federal Home Loan Bank of San Francisco, which have been authorized by the administrator pursuant to Section 53657 shall be authorized by treasurers to act as agents of depository.

(c) The securities are subject to order of the depository in accordance with Section 53654 except when the provisions of subdivision (i) of Section 53661 and Section 53665 are in effect.

(d) An agent of depository shall not release any security held to secure a local agency deposit in a depository unless the administrator issues an order authorizing the release where either of the following occurs:

(1) A state or federal regulatory agency has taken possession of the depository.

(2) A conservator, receiver, or other legal custodian has been appointed for the depository.

SEC. 11. Section 91503 of the Government Code is amended to read:

91503. The property acquired pursuant to this article shall be suitable for, or shall evidence an obligation respecting, certain activities or uses. The activities or uses shall include one or more of the activities or uses described in subdivision (a) and, unless incidental to those activities or uses, shall not include any of the activities described in, and not excepted from, subdivision (b).

(a) (1) Industrial uses including, without limitation, assembling, fabricating, manufacturing, processing, or warehousing activities with respect to any products of agriculture, forestry, mining, or manufacture, if these activities have demonstrated job creation or retention potential.

(2) Energy development, production, collection, or conversion from one form of energy to another.

(3) Research and development activities relating to commerce or industry, including, without limitation, professional, administrative, and scientific office and laboratory activities or uses.

(4) Processing or manufacturing recycled or reused products and materials by manufacturing facilities.

(b) (1) Residential real property for family unit or other housing activities.

(2) Airport, dock, wharf, or mass commuting activities, or storage or training activities related to any thereof.

(3) Sewage or solid waste disposal activities or electric energy or gas furnishing activities, unless the property acquired is suitable for one or more of the activities described in paragraph (2) of subdivision (a) and is not described in Section 142(f) of the Internal Revenue Code of 1986, as amended.

(4) Water furnishing activities.

(5) Any activities of persons qualifying as exempt persons under Section 501 of the Internal Revenue Code of 1986, as amended, undertaken by those persons, other than activities constituting an unrelated trade or business as described in Section 513 of that code.

SEC. 12. Section 91521.3 of the Government Code is amended to read:

91521.3. Authorities shall not be authorized to undertake projects through the issuance of bonds on or after January 1, 2004, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date. This section does not apply to issuance of bonds to refund any bonds issued prior to January 1, 2004.

SEC. 13. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to meet the unanticipated demand for financing through the California Health Facilities Financing Authority to assist both public and private, nonprofit health facilities during the current calendar year, it is necessary for this act to take effect immediately.

CHAPTER 1036

An act to add Section 2889.9 to the Public Utilities Code, relating to telecommunications.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. It is the intent of the Legislature that this act and Senate Bill 378 of the 1997–98 Regular Session be read together and serve as a deterrence to cramming.

SEC. 2. Section 2889.9 is added to the Public Utilities Code, to read:

2889.9. (a) No person or corporation shall misrepresent its association or affiliation with a telephone carrier when soliciting, inducing, or otherwise implementing the subscriber's agreement to purchase the products or services of the person or corporation, and have the charge for the product or service appear on the subscriber's telephone bill.

(b) The provisions of Chapter 11 (commencing with Section 2100) of Part 1 of Division 1 apply to a public utility subject to this section and Section 2890. If the commission finds that a person or corporation or its billing agent that is a nonpublic utility, and is subject to the provisions of this section and Section 2890, has violated any requirement of this article, or knowingly provided false information to the commission on matters subject to this section and Section 2890, the commission may enforce Sections 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, and 2114 against those persons, corporations, and billing agents as if the persons, corporations, or billing agents were a public utility. Neither this authority nor any other provision of this article grants the commission jurisdiction to regulate persons or corporations or their billing agents who are not otherwise subject to commission regulation, other than as specifically set forth in this section and Section 2890.

(c) If the commission finds that a person, corporation, or billing agent is operating in violation of any provision of this section and Section 2890, the commission may order the billing telephone company to terminate the billing and collection services for that person, corporation, or billing agent. Nothing in this section and Section 2890 precludes a billing telephone company from taking action on its own to terminate billing and collection services.

(d) The commission shall establish rules that require each billing telephone company, billing agent, and company that provides products or services that are charged on subscribers' telephone bills, to provide the commission with reports of complaints made by subscribers regarding the billing for products or services that are charged on their telephone bills as a result of the billing and collection services that the billing telephone company provides to third parties, including affiliates of the billing telephone company.

(e) If the commission receives more than 100 complaints regarding unauthorized telephone charges in any 90-day period as to a person, corporation, or billing agent's activities that are subject to Section 2890 and this section, the commission's consumer services division shall commence a formal or informal investigation. The commission, to further the purposes of Section 2890 and this section, may change the number of complaints in any 90-day period that initiates the commencement of an investigation. This subdivision does not prohibit the commission's consumer services division from opening any investigation it deems necessary to enforce Section 2890 or this section.

(f) Failure by a person, corporation, or billing agent to respond to commission staff requests for information is grounds for the commission to order the billing telephone company or companies that are providing billing and collection services to cease billing and collection services for the person, corporation, or billing agent.

(g) Persons or corporations originating charges for products or services, their billing agents, and telephone corporations billing for these products or services shall cooperate with the commission in the commission's efforts to enforce the provisions of this article.

(h) This section and Section 2890 do not obligate a billing telephone company to provide billing and collection services to a billing agent.

(i) The commission may adopt rules, regulations and issue decisions and orders, as necessary, to safeguard the rights of consumers and to enforce the provisions of this article.

(j) For the purposes of this section, "billing agent" means the clearinghouse or billing aggregator.

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 1037

An act to amend Section 40802 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 40802 of the Vehicle Code, as amended by Section 2 of Chapter 104 of the Statutes of 1996, is amended to read:

40802. (a) A "speed trap" is either of the following:

(1) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(2) A particular section of a highway with a prima facie speed limit that is provided by this code or by local ordinance under subparagraph (A) of paragraph (2) of subdivision (a) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within five years prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects. This paragraph does not apply to a local street, road, or school zone.

(b) (1) For purposes of this section, a local street or road is defined by the latest functional usage and federal-aid system maps submitted to the federal Highway Administration, except that when these maps have not been submitted, or when the street or road is not shown on the maps, a "local street or road" means a street or road that primarily provides access to abutting residential property and meets the following three conditions:

(A) Roadway width of not more than 40 feet.

(B) Not more than one-half of a mile of uninterrupted length. Interruptions shall include official traffic control devices as defined in Section 445.

(C) Not more than one traffic lane in each direction.

(2) For purposes of this section "School zone" means that area of road contiguous to a school building or the grounds thereof, and on which is posted a standard "SCHOOL" warning sign, while children are going to or leaving the school either during school hours or during the noon recess period.

(c) (1) When all the following criteria are met, paragraph (2) of this subdivision shall be applicable and subdivision (a) shall not be applicable:

(A) When radar is used, the officer issuing the citation has successfully completed a radar operator course of not less than 24 hours on the use of police traffic radar, and the course was approved and certified by the Commission on Peace Officer Standards and Training.

(B) When laser or any other electronic device is used to measure the speed of moving objects, the officer issuing the notice to appear has successfully completed the training required in subparagraph (A) and an additional training course of not less than two hours approved and certified by the Commission on Peace Officer Standards and Training.

(C) (i) The prosecution proved that the officer complied with subparagraphs (A) and (B) and that an engineering and traffic survey has been conducted in accordance with subparagraph (B) of paragraph (2). The prosecution proved that, prior to the officer issuing the notice to appear, the officer established that the radar, laser, or other electronic device conformed to the requirements of subparagraph (D).

(ii) The prosecution proved the speed of the accused was unsafe for the conditions present at the time of alleged violation unless the citation was for a violation of Section 22349, 22356, or 22406.

(D) The radar, laser, or other electronic device used to measure the speed of the accused meets or exceeds the minimal operational standards of the National Traffic Highway Safety Administration, and has been calibrated within the three years prior to the date of the alleged violation by an independent certified laser or radar repair and testing or calibration facility.

(2) A "speed trap" is either of the following:

(A) A particular section of a highway measured as to distance and with boundaries marked, designated, or otherwise determined in order that the speed of a vehicle may be calculated by securing the time it takes the vehicle to travel the known distance.

(B) (i) A particular section of a highway or state highway with a prima facie speed limit that is provided by this code or by local ordinance under subparagraph (A) of paragraph (2) of subdivision (a) of Section 22352, or established under Section 22354, 22357, 22358, or 22358.3, if that prima facie speed limit is not justified by an engineering and traffic survey conducted within one of the following time periods, prior to the date of the alleged violation, and enforcement of the speed limit involves the use of radar or any other electronic device that measures the speed of moving objects:

(I) Except as specified in subclause (II), seven years.

(II) If an engineering and traffic survey was conducted more than seven years prior to the date of the alleged violation, and a registered engineer evaluates the section of the highway and determines that no significant changes in roadway or traffic conditions have occurred, including, but not limited to, changes in adjoining property or land use, roadway width, or traffic volume, 10 years.

(ii) This subparagraph does not apply to a local street, road, or school zone.

CHAPTER 1038

An act to amend Section 56302 of the Government Code, relating to local government reorganization.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 56302 of the Government Code is amended to read:

56302. (a) The Legislature finds and declares that nearly 35 years have passed since legislators last conducted a thorough investigation

of the policies, practices, and statutes affecting the organization and boundaries of California's local agencies. That effort, which resulted in the enactment of the Knox-Nisbet Act, was the product of a careful study by the Commission on Metropolitan Area Problems, commissioned by Governor Edmund G. Brown, Sr. In the intervening decades, there have been fundamental, constitutional, demographic, economic, institutional, and political shifts in California and within the state's communities. The sustained interest in incorporating new cities, resistance to city annexations, problems in financing local agency facilities and services, and proposals to detach territory from existing cities demonstrate the need for the Legislature and the Governor to reevaluate the statutory policies and procedures that have guided California's communities for nearly 35 years. Therefore, the Legislature finds and declares the necessity for commissioning a careful study of local agency organization and boundaries, consistent with its constitutional duty pursuant to subdivision (a) of Section 2 of Article XI of the California Constitution.

(b) There is created the Commission on Local Governance for the 21st Century which shall consist of 15 members. The Governor shall appoint nine members, the Assembly Committee on Rules shall appoint three members, and the Senate Committee on Rules shall appoint three members. Appointees shall serve until the date that this section is repealed, except that, in the event that a vacancy occurs due to the resignation of a commissioner, a new member shall be appointed by the authority that appointed the resigning member. Of the Governor's appointments, one shall be a city representative, one shall be a county representative, one shall be a special district representative, and one shall be a representative of local agency formation commissions. Each appointing authority shall endeavor to appoint members who reflect the geographic, ethnic, racial, gender, and cultural diversity of the state. Each appointing authority shall appoint members who have demonstrated an interest and have proven academic or professional ability in the fields of demography, urban economics, land use planning, public finance, and the legal aspects of local agency organization and boundaries.

(c) Notwithstanding Section 7550.5, on or before December 31, 1999, the commission shall report to the Legislature and the Governor regarding all of the following:

(1) A review of the current statutes, including, but not limited to, this division, regarding the policies, criteria, procedures, and precedents for city, county, and special district boundary changes.

(2) Proposals to add criteria to increase citizen and community participation in city, county, and special district governments.

(3) Proposals to ensure conformity with the requirements of federal law, including, but not limited to, the federal Voting Rights Act of 1965 (42 U.S.C. Sec. 1971).

(4) Recommendations for statutory changes, if any.

(d) The commission shall conduct public meetings to solicit the views and advice of the public, including elected and appointed officials, regarding city, county, and special district organization and boundaries.

(e) The commission shall select a chair and a vice chair from among its membership.

(f) The members of the commission shall be reimbursed their actual and necessary expenses for attending the meetings of the commission. The commission may authorize a payment of a per diem not to exceed one hundred dollars ($100) to its members for each day while they are in attendance at meetings of the commission. The commission may appoint employees, including counsel, define their qualifications and duties, and provide for compensation for the performance of those duties. The commission may contract with any other public or private agency for any services necessary to carry out the purposes of this section. The cost of the quarters, equipment, supplies, and operating expenses incurred by the commission shall be paid from the appropriation made by the act that enacted this section.

(g) The commission shall remain in existence until July 1, 2000, and as of that date, this section is inoperative. This section is repealed on January 1, 2001, unless a later enacted statute, enacted on or before January 1, 2001, deletes or extends that date and the commission's existence.

CHAPTER 1039

An act to amend Sections 17053.34, 17053.46, 17053.47, 17053.74, 17276, 17276.1, 17276.2, 23622.7, 23622.8, 23634, 23646, 24416, 24416.1, and 24416.2 of, and to add Sections 17276.4, 17276.5, 17276.6, 24416.4, 24416.5, and 24416.6 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 17053.34 of the Revenue and Taxation Code is amended to read:

17053.34. (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 who employes a qualified employee in a targeted tax area during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of 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 employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the targeted tax area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the targeted tax area within the 60-month period prior to the targeted tax area expiration date shall continue to qualify for the credit under this section after the targeted tax area expiration date, in accordance with all provisions of this section applied as if the targeted tax 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) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of his or her 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 targeted tax area.

(ii) Performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in a targeted tax area.

(iii) Is hired by the qualified taxpayer after the date of original designation of the area in which services were performed as a targeted tax area.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for 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 its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(VII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a resident of a targeted tax area.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) (A) "Qualified taxpayer" means a person or entity that meets both of the following:

(i) 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.

(ii) 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.

(B) In the case of any pass-through 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 23634 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 11 (commencing with Section 23001).

For purposes of this subdivision, the term "pass-through entity" means any partnership or S corporation.

(6) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(d) The qualified taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(e) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single 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 23634, shall apply with respect to determining employment.

(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 (f)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) (A) If the employment, other than seasonal employment, of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) 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 employee 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 employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the qualified taxpayer, 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 employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable 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 employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified employee, if that employee 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified

taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified employee 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 employee 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.

(g) 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.

(h) For purposes of this section, "targeted tax area" means an area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(i) 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 taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.33, 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 qualified taxpayer's business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this section as follows:

(A) 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 2.

(B) "The targeted tax 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 (h).

(4) In the event that a credit carryover is allowable under subdivision (h) for any taxable year after the targeted tax area expiration date, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

SEC. 1.5. Section 17053.34 of the Revenue and Taxation Code is amended to read:

17053.34. (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 who employs a qualified employee in a targeted tax area during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of 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 employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the targeted tax area expiration

date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the targeted tax area within the 60-month period prior to the targeted tax area expiration date shall continue to qualify for the credit under this section after the targeted tax area expiration date, in accordance with all provisions of this section applied as if the targeted tax 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) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of his or her 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 targeted tax area.

(ii) Performs at least 50 percent of his or her services for the qualified taxpayer during the taxable year in a targeted tax area.

(iii) Is hired by the qualified taxpayer after the date of original designation of the area in which services were performed as a targeted tax area.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for 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 its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has

exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(VII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a

member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a resident of a targeted tax area.

(X) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) (A) "Qualified taxpayer" means a person or entity that meets both of the following:

(i) 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.

(ii) 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.

(B) In the case of any pass-through 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 23634 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 11 (commencing with Section 23001). For purposes of this subdivision, the term "pass-through entity" means any partnership or S corporation.

(6) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(d) The qualified taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a

certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(e) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single 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 23634, shall apply with respect to determining employment.

(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 (f)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) (A) If the employment, other than seasonal employment, of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) 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 employee 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 employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the qualified taxpayer, 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 employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable 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 employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the qualified taxpayer.

(v) A termination of employment of a qualified employee, if that employee 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified employee 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 employee 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.

(g) 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.

(h) For purposes of this section, "targeted tax area" means an area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(i) 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 taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.33, 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 qualified taxpayer's business income attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the targeted tax area . 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 targeted tax area in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the targeted tax area by multiplying the 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. For purposes of this paragraph:

(A) 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 targeted tax area 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the targeted tax area 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) 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 (h).

(5) In the event that a credit carryover is allowable under subdivision (h) for any taxable year after the targeted tax area expiration date, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

SEC. 2. 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 first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business

operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(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) (A) If the employment, other than seasonal 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.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred

to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that individual is replaced by other qualified displaced employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) 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) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer's business income that is 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 LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a LAMBRA by multiplying the 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. For purposes of this paragraph:

(A) 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 LAMBRA 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA 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) 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.

SEC. 2.3. 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 first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(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) (A) If the employment, other than seasonal 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.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th

month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that individual is replaced by other qualified displaced employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) 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.

SEC. 2.5. 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, 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 first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business

operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However, wages paid or incurred with respect to qualified disadvantaged individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section applied as if the LAMBRA 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) "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) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(II) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial

layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of such a closure or layoff.

(III) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(IV) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(V) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(VI) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) Has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act.

(v) An individual who is enrolled in or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(vi) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(5) "Qualified taxpayer" means a taxpayer or partnership 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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(8) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(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) (A) If the employment, other than seasonal 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.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that individual is replaced by other qualified displaced employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) 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) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer's business income that is 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 LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a LAMBRA by multiplying the 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. For purposes of this paragraph:

(A) 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 LAMBRA 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA 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) 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. 2.7. 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, 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 first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However, wages paid or incurred with respect to qualified disadvantaged individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section

applied as if the LAMBRA 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) "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) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(II) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of such a closure or layoff.

(III) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(IV) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(V) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(VI) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) Has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act.

(v) An individual who is enrolled in or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(vi) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(5) "Qualified taxpayer" means a taxpayer or partnership 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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(8) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(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) (A) If the employment, other than seasonal 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.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred

to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that individual is replaced by other qualified displaced employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) 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.

SEC. 3. 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 first day the qualified disadvantaged individual commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(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) (A) If the employment, other than seasonal 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.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of California Code of Regulations) of that qualified disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that qualified disadvantaged individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) 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 2.

(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. 3.5. 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 first day the qualified disadvantaged individual commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(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) (A) If the employment, other than seasonal 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.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that qualified disadvantaged individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) 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, exceeds the "net tax" for the taxable year, that portion of the credit that the taxable year shall not exceed the amount of tax that would be imposed on in succeeding years, until the credit is exhausted. The credit shall be 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) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the Manufacturing Enhancement Area. For that purpose, the taxpayer's business income that is 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 Manufacturing Enhancement Area in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a Manufacturing Enhancement Area by multiplying the 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. For purposes of this paragraph:

(A) 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 Manufacturing Enhancement Area 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Manufacturing Enhancement Area 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) 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. 4. Section 17053.74 of the Revenue and Taxation Code is amended to read:

17053.74. (a) There shall be allowed a credit against the "net tax" (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date,

in accordance with all provisions of this section applied as if the enterprise zone 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) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(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 an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for 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 its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation

in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(6) "Seasonal employment" means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single 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 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 (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as

terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified 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 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.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, 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 employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable 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 employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified 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 qualified 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.

(f) 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.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. 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 (i) or (j).

(i) 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 taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable 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 by substituting "the enterprise zone" 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 (i).

(k) The changes made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1997.

SEC. 4.5. Section 17053.74 of the Revenue and Taxation Code is amended to read:

17053.74. (a) There shall be allowed a credit against the "net tax" (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone 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) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(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 an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person

eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for 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 its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(6) "Seasonal employment" means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a

certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single 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 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 (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified 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 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.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, 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 employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable 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 employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified 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 qualified 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.

(f) 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.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. 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 (i) or (j).

(i) 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 taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the "net tax" for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the enterprise 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 enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the enterprise zone by multiplying the 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. For purposes of this paragraph:

(A) 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 enterprise 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise 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) 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 (i).

(k) The changes made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1997.

SEC. 5. Section 17276 of the Revenue and Taxation Code is amended to read:

17276. Except as provided in Sections 17276.1 , 17276.2, 17276.4, 17276.5, and 17276.6, 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 "20 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 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, 17276.2, 17276.4, 17276.5, and 17276.6.

(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. 6. Section 17276.1 of the Revenue and Taxation Code is amended to read:

17276.1. (a) A qualified taxpayer, as defined in Section 17276.2, 17276.4, 17276.5, or 17276.6, may elect to take the deduction provided by Section 172 of the Internal Revenue Code, relating to the net operating loss deduction, as modified by Section 17276, with the following exceptions:

(1) Subdivision (a) of Section 17276, relating to years in which allowable losses are sustained, shall not be applicable.

(2) Subdivision (b) of Section 17276, relating to the 50-percent reduction of losses, shall not be applicable.

(b) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred and shall be irrevocable. In addition to the exceptions specified in subdivision (a), the provisions of Section 17276.2, 17276.4, 17276.5, or 17276.6, as appropriate, shall be applicable.

(c) Any carryover of a net operating loss sustained by a qualified taxpayer, as defined in subdivision (a) or (b) of Section 17276.2 as that section read immediately prior to January 1, 1997, shall, if previously elected, continue to be a deduction, as provided in subdivision (a), applied as if the provisions of subdivision (a) or (b) of Section 17276.2, as that section read prior to January 1, 1997, still applied.

SEC. 7. Section 17276.2 of the Revenue and Taxation Code is amended to read:

17276.2. (a) The term "qualified taxpayer" as used in Section 17276.1 includes 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. For purposes of this subdivision, all of the following shall apply:

(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 taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 17276.4, 17276.5, or 17276.6 as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 17276, the amount of the loss determined under this section or Section 17276.4, 17276.5, or 17276.6 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (b) shall be included in the election under Section 17276.1.

SEC. 7.5. Section 17276.2 of the Revenue and Taxation Code is amended to read:

17276.2. (a) The term "qualified taxpayer" as used in Section 17276.1 includes 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. For purposes of this subdivision, all of the following shall apply:

(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 subdivision, as follows:

(i) Loss shall be apportioned to the enterprise 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 enterprise 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 enterprise zone as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the enterprise 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 enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this subdivision as follows:

(i) Business income shall be apportioned to the enterprise zone by multiplying the 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. For purposes of this clause:

(I) 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 enterprise 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.

(II) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise 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.

(ii) 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.

(3) The changes made to this subdivision by the act adding this paragraph shall apply to taxable years beginning on or after January 1, 1998.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 17276.4, 17276.5, or 17276.6 as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 17276, the amount of the loss determined under this section or Section 17276.4, 17276.5, or 17276.6 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (b) shall be included in the election under Section 17276.1.

SEC. 8. Section 17276.4 is added to the Revenue and Taxation Code, to read:

17276.4. (a) The term "qualified taxpayer" as used in Section 17276.1 includes 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. For purposes of this subdivision, all of the following shall apply:

(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) "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:

(A) 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 2.

(B) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(3) 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 subdivision (c).

(4) 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 paragraph (2) and allowing a net operating loss deduction.

(5) 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 2.

(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.

(6) "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.

(b) This section 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 section.

(c) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (d).

(d) If a taxpayer is eligible to qualify under this section and either Section 17276.2, 17276.5, or 17276.6 as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.

(e) Notwithstanding Section 17276, the amount of the loss determined under this section or Section 17276.2, 17276.5, or 17276.6 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (c) shall be included in the election under Section 17276.1.

(f) This section shall cease to be operative on December 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this section.

SEC. 9. Section 17276.5 is added to the Revenue and Taxation Code, to read:

17276.5. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, the term "qualified taxpayer" as used in Section 17276.1 includes a taxpayer engaged in the conduct of a trade or business within a LAMBRA. For purposes of this subdivision, all of the following shall apply:

(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) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(3) "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. For purposes of this paragraph:

(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. 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.

(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.

(4) "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:

(A) 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 2.

(B) "The LAMBRA" shall be substituted for "this state."

(5) 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) of Part 11, modified as follows:

(A) 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 2.

(B) "The LAMBRA" shall be substituted for "this state."

(C) 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.

(6) "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.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 17276.2, 17276.4, or 17276.6 as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 17276, the amount of the loss determined under this section or Section 17276.2, 17276.4, or 17276.6 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (b) shall be included in the election under Section 17276.1.

SEC. 9.5. Section 17276.5 is added to the Revenue and Taxation Code, to read:

17276.5. (a) For each taxable year beginning on or after January 1, 1995, and before January 1, 2003, the term "qualified taxpayer" as used in Section 17276.1 includes a taxpayer engaged in the conduct of a trade or business within a LAMBRA. For purposes of this subdivision, all of the following shall apply:

(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) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(3) "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. For purposes of this paragraph:

(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. 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.

(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.

(4) "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 for purposes of this section as follows:

(A) 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 2.

(B) "The LAMBRA" shall be substituted for "this state."

(5) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA.

(6) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. 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 LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this subdivision as follows:

(A) Business income shall be apportioned to a LAMBRA 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. For purposes of this clause:

(i) 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 LAMBRA 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.

(ii) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA 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.

(B) 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 the limitation specified in paragraph (5) and allowing a net operating loss deduction.

(7) "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.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 17276.2, 17276.4, or 17276.6 as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 17276, the amount of the loss determined under this section or Section 17276.2, 17276.4, or 17276.6 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (b) shall be included in the election under Section 17276.1.

(e) This section shall apply to taxable years beginning on or after January 1, 1998.

SEC. 10. Section 17276.6 is added to the Revenue and Taxation Code, to read:

17276.6. (a) For each taxable year beginning on or after January 1, 1998, the term "qualified taxpayer" as used in Section 17276.1 includes a person or entity that meets both of the following:

(1) 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.

(2) 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 pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level.

(b) For purposes of subdivision (a), all of the following shall apply:

(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 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.

(2) "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 section as follows:

(A) 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 2.

(B) "The targeted tax area" shall be substituted for "this state."

(3) 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 section as follows:

(A) 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 2.

(B) "The targeted tax area" shall be substituted for "this state."

(4) If a loss carryover is allowable pursuant to this section 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 paragraph (2).

(5) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that

applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 17276.2, 17276.4, or 17276.5 as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 17276, the amount of the loss determined under this section or Section 17276.2, 17276.4, or 17276.5 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (b) shall be included in the election under Section 17276.1.

SEC. 10.5. Section 17276.6 is added to the Revenue and Taxation Code, to read:

17276.6. (a) For each taxable year beginning on or after January 1, 1998, the term "qualified taxpayer" as used in Section 17276.1 includes a person or entity that meets both of the following:

(1) 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.

(2) 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 pass-through entity, the determination of whether a taxpayer is a qualified taxpayer under this section shall be made at the entity level.

(b) For purposes of subdivision (a), all of the following shall apply:

(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 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.

(2) "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 section as follows:

(A) 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 2.

(B) "The targeted tax area" shall be substituted for "this state."

(3) 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.

(4) Attributable income shall be that portion of the qualified taxpayer's California source business income that is apportioned to the targeted tax area. For that purpose, the qualified 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 targeted tax area in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this subdivision as follows:

(A) Business income shall be apportioned to the targeted tax area by multiplying the total 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. For purposes of this clause:

(i) 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 targeted tax area 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.

(ii) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the targeted tax area 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.

(B) 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 subparagraph (B) and allowing a net operating loss deduction.

(5) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 17276.2, 17276.4, or 17276.5 as a "qualified taxpayer," with respect to a net operating loss in a taxable year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 17276, the amount of the loss determined under this section or Section 17276.2, 17276.4, or 17276.5 shall be the only net operating loss allowed to be carried over from that taxable year and the designation under subdivision (b) shall be included in the election under Section 17276.1.

(e) This section shall apply to taxable years beginning on or after January 1, 1998.

SEC. 11. Section 23622.7 of the Revenue and Taxation Code is amended to read:

23622.7. (a) There shall be allowed a credit against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date,

in accordance with all provisions of this section applied as if the enterprise zone 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) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for 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 its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation

in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

Federal Supplemental Security Income benefits.

Aid to Families with Dependent Children.

Food stamps.

State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a bank or corporation engaged in 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.

(6) "Seasonal employment" means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member 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) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(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 (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified 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 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 employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, 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 employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable 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 employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee 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 employee 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 taxpayer, if the qualified 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.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies:

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. 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 (i) or (j).

(i) 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 income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) The amount of attributable 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 by substituting "the enterprise zone" 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 (i).

(k) The changes made to this section by the act adding this subdivision shall apply to income years beginning on or after January 1, 1997.

SEC. 11.5. Section 23622.7 of the Revenue and Taxation Code is amended to read:

23622.7. (a) There shall be allowed a credit against the "tax" (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) "Qualified wages" means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the income year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, "qualified wages" means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone 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) "Zone expiration date" means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the income year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the income year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for 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 its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) "Taxpayer" means a bank or corporation engaged in 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.

(6) "Seasonal employment" means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member 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) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(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 (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified 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 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 employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, 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 employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable 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 employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee 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 employee 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 taxpayer, if the qualified 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.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies:

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, "enterprise zone" means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. 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 (i) or (j).

(i) 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 income years, until the credit is

exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the "tax" for the income year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer's business 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 enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the enterprise zone by multiplying the 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. For purposes of this paragraph:

(A) 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 enterprise 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise 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) 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 (i).

(k) The changes made to this section by the act adding this subdivision shall apply to income years on or after January 1, 1997.

SEC. 12. Section 23622.8 of the Revenue and Taxation Code, as amended by Chapter 7 of the Statutes of 1998, 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 first day the qualified disadvantaged individual commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(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 all 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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(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) (A) If the employment, other than seasonal 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.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that qualified disadvantaged individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) 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 2.

(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. 12.5. 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 first day the qualified disadvantaged individual commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(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 all 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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(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) (A) If the employment, other than seasonal 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.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified disadvantaged individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified disadvantaged individual, if that qualified disadvantaged individual is replaced by other qualified disadvantaged individuals so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) 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) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the Manufacturing Enhancement Area. 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 Manufacturing Enhancement Area in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a Manufacturing Enhancement Area by multiplying the 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. For the purposes of this paragraph:

(A) 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 Manufacturing Enhancement Area 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the Manufacturing Enhancement Area 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) 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. 13. Section 23634 of the Revenue and Taxation Code is amended to read:

23634. (a) For each income year beginning on or after January 1, 1998, there shall be allowed a credit against the "tax" (as defined by Section 23036) to a qualified taxpayer who employs a qualified employee in a targeted tax area during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of 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 employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the targeted tax area expiration date. However, wages paid or incurred with respect to qualified

employees who are employed by the qualified taxpayer within the targeted tax area within the 60-month period prior to the targeted tax area expiration date shall continue to qualify for the credit under this section after the targeted tax area expiration date, in accordance with all provisions of this section applied as if the targeted tax 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) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of his or her 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 targeted tax area.

(ii) Performs at least 50 percent of his or her services for the qualified taxpayer during the income year in a targeted tax area.

(iii) Is hired by the qualified taxpayer after the date of original designation of the area in which services were performed as a targeted tax area.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for 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 its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has

exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(VII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a

member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a resident of a targeted tax area.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible under the federal Targeted Jobs Tax Credit Program.

(5) (A) "Qualified taxpayer" means a person or entity that meets both of the following:

(i) 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.

(ii) 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.

(B) In the case of any pass-through 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 17053.34 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term "pass-through entity" means any partnership or S corporation.

(6) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(d) The qualified taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(e) (1) For purposes of this section:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member 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) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(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 (f)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) (A) If the employment, other than seasonal employment, of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) 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 employee 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 employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the qualified taxpayer, 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 employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable 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 employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified employee 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 employee 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 employee 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.

(g) Rules similar to the rules provided in Sections 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies.

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(h) For purposes of this section, "targeted tax area" means an area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(i) 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 income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23633, including any credit carryover from prior years, 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 attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) The amount of attributable income described in paragraph (1) shall be determined in accordance with Chapter 17 (commencing with Section 25101), modified for purposes of this section as follows:

(A) 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 2.

(B) "The targeted tax 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 (h).

(4) In the event that a credit carryover is allowable under subdivision (h) for any income year after the targeted tax area designation has expired or been revoked, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

SEC. 13.5. Section 23634 of the Revenue and Taxation Code is amended to read:

23634. (a) For each income year beginning on or after January 1, 1998, there shall be allowed a credit against the "tax" (as defined by Section 23036) to a qualified taxpayer who employs a qualified employee in a targeted tax area during the income year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of 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 employees that does not exceed 150 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the qualified taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the targeted tax area expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the qualified taxpayer within the targeted tax area within the 60-month period prior to the targeted tax area expiration date shall continue to qualify for the credit under this section after the targeted tax area expiration date, in accordance with all provisions of this section applied as if the targeted tax 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) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(4) (A) "Qualified employee" means an individual who meets all of the following requirements:

(i) At least 90 percent of his or her 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 targeted tax area.

(ii) Performs at least 50 percent of his or her services for the qualified taxpayer during the income year in a targeted tax area.

(iii) Is hired by the qualified taxpayer after the date of original designation of the area in which services were performed as a targeted tax area.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for 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 its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55

years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the qualified taxpayer, was a resident of a targeted tax area.

(X) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training

Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) (A) "Qualified taxpayer" means a person or entity that meets both of the following:

(i) 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.

(ii) 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.

(B) In the case of any pass-through 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 17053.34 shall be allowed to the pass-through entity and passed through to the partners or shareholders in accordance with applicable provisions of this part or Part 10 (commencing with Section 17001). For purposes of this subparagraph, the term "pass-through entity" means any partnership or S corporation.

(6) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) If the qualified taxpayer is allowed a credit for qualified wages pursuant to this section, only one credit shall be allowed to the taxpayer under this part with respect to those qualified wages.

(d) The qualified taxpayer shall do both of the following:

(1) Obtain from either the Employment Development Department, as permitted by federal law, or the local county or city Job Training Partnership Act administrative entity or the local county GAIN office or social services agency, as appropriate, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(e) (1) For purposes of this section:

(A) All employees of all corporations that are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member 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) For purposes of this subdivision, "controlled group of corporations" means "controlled group of corporations" as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(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 (f)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(f) (1) (A) If the employment, other than seasonal employment, of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) 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 employee 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 employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the qualified taxpayer, 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 employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable 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 employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the qualified taxpayer and a qualified employee 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 employee 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 employee 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.

(g) Rules similar to the rules provided in Sections 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies.

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(h) For purposes of this section, "targeted tax area" means an area designated pursuant to Chapter 12.93 (commencing with Section 7097) of Division 7 of Title 1 of the Government Code.

(i) 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 income years, until the credit is exhausted. The credit shall be applied first to the earliest income years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23633, including any credit carryover from prior years, 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 attributable to the targeted tax area determined as if that attributable income represented all of the income of the qualified taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the targeted tax area . 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 targeted tax area in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the targeted tax area by multiplying the 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. For purposes of this paragraph:

(A) 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 targeted tax area 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the targeted tax area 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) 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 (h).

(5) In the event that a credit carryover is allowable under subdivision (h) for any income year after the targeted tax area designation has expired or been revoked, the targeted tax area shall be deemed to remain in existence for purposes of computing the limitation specified in this subdivision.

SEC. 14. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the income 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 income 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 income year.

(C) Wages received during the 60-month period beginning with the first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business

operation of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(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 the provisions of 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 income 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 income 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 provided for 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 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 as determined below 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 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. 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 qualified taxpayer that first commences doing business in the LAMBRA during the income 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 income 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 that 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 income 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 income 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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) (1) For purposes of this section, both 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 employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that both of the following apply:

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) 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) (A) If the employment, other than seasonal 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 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 employee.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal 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 seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) 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 income 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 tax for the taxpayer's second income year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(f) 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 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 "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.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the "tax" for the income 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 income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer's business income that is 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 LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a LAMBRA by multiplying the 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. For purposes of this paragraph:

(A) 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 LAMBRA 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA 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. 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).

(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.

SEC. 14.3. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, there shall be allowed as a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the income 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 income 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 income year.

(C) Wages received during the 60-month period beginning with the first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operation of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(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 the provisions of 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 income 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 income 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 provided for 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 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 as determined below 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 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. 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 qualified taxpayer that first commences doing business in the LAMBRA during the income 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 income 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 that 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 income 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 income 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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) (1) For purposes of this section, both 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 employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that both of the following apply:

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) 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) (A) If the employment, other than seasonal 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 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 employee.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1254-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal 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 seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) 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 income 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 tax for the taxpayer's second income year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(f) 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 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 "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.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the "tax" for the income 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 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), 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 income years, as if it were an amount exceeding the "tax" for the income 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.

SEC. 14.5. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each income year beginning on or after January 1, 1995, there shall be allowed as a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the income 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 income 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 income year.

(C) Wages received during the 60-month period beginning with the first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operation of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However, wages paid or incurred with respect to qualified disadvantaged individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section applied as if the LAMBRA 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) "LAMBRA" means a local agency military base recovery area designated in accordance with the provisions of 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 income 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 income 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 provided for 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) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(II) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of such a closure or layoff.

(III) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(IV) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(V) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(VI) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) Has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act.

(v) An individual who is enrolled in or has completed a state rehabilitation plan or is a service-connected disabled veteran,

veteran of the Vietnam era, or veteran who is recently separated from military service.

(vi) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(5) "Qualified 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 as determined below 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 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. 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 qualified taxpayer that first commences doing business in the LAMBRA during the income 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 income 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 that 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 income 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 income 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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(8) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(c) (1) For purposes of this section, both 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 employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that both of the following apply:

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) 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) (A) If the employment of any employee, other than seasonal employment, 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 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 employee.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as

defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal 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 seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) 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 income 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 tax for the taxpayer's second income year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(f) 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 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 "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.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the "tax" for the income 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 income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. For that purpose, the taxpayer's business income that is 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 LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Income shall be apportioned to a LAMBRA by multiplying the 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. For purposes of this paragraph:

(A) 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 LAMBRA 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.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA 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) 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).

(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. 14.7. Section 23646 of the Revenue and Taxation Code is amended to read:

23646. (a) For each income year beginning on or after January 1, 1995, there shall be allowed as a credit against the "tax" (as defined in Section 23036) to a qualified taxpayer for hiring a qualified disadvantaged individual or a qualified displaced employee during the income 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 income 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 income year.

(C) Wages received during the 60-month period beginning with the first day the individual commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operation of the qualified taxpayer does not constitute commencement of employment for purposes of this section.

(D) Qualified wages do not include any wages paid or incurred by the qualified taxpayer on or after the LAMBRA expiration date. However, wages paid or incurred with respect to qualified disadvantaged individuals or qualified displaced employees who are employed by the qualified taxpayer within the LAMBRA within the 60-month period prior to the LAMBRA expiration date shall continue to qualify for the credit under this section after the LAMBRA expiration date, in accordance with all provisions of this section applied as if the LAMBRA 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) "LAMBRA" means a local agency military base recovery area designated in accordance with the provisions of 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 income 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 income 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 provided for 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) An economically disadvantaged individual age 16 years or older.

(iv) A dislocated worker who meets any of the following conditions:

(I) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(II) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of such a closure or layoff.

(III) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(IV) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(V) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(VI) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(VII) Experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(VIII) Has been terminated or laid off or has received a notice of termination or layoff as a consequence of compliance with the Clean Air Act.

(v) An individual who is enrolled in or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(vi) An ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilty.

(vii) A recipient of:

(I) Federal Supplemental Security Income benefits.

(II) Aid to Families with Dependent Children.

(III) Food stamps.

(IV) State and local general assistance.

(viii) Is a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(5) "Qualified 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 as determined below 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 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. 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 qualified taxpayer that first commences doing business in the LAMBRA during the income 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 income 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 that 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 income 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 income 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.

(7) "Seasonal employment" means employment by a qualified taxpayer that has regular and predictable substantial reductions in trade or business operations.

(8) "LAMBRA expiration date" means the date the LAMBRA designation expires, is no longer binding, or becomes inoperative.

(c) (1) For purposes of this section, both 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 employer.

(B) The credit (if any) allowable by this section to each member shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

(2) For purposes of this subdivision, "controlled group of corporations" has the meaning given to that term by Section 1563(a) of the Internal Revenue Code, except that both of the following apply:

(A) "More than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(B) The determination shall be made without regard to Section 1563(a)(4) and Section 1563(e)(3)(C) of the Internal Revenue Code.

(3) 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) (A) If the employment of any employee, other than seasonal employment, 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 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 employee.

(B) If the seasonal employment of any qualified disadvantaged individual, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the qualified taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, the tax imposed by this part, for the income year that includes the 60th month following the month in which the qualified disadvantaged individual commences seasonal employment with the qualified taxpayer, 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) Subparagraph (A) of 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 that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) 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) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified disadvantaged individual who voluntarily fails to return to the seasonal employment of the qualified taxpayer.

(ii) A failure to continue the seasonal employment of a qualified disadvantaged individual who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer seasonal employment to that qualified disadvantaged individual.

(iii) A failure to continue the seasonal employment of a qualified disadvantaged individual, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as

defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that individual.

(iv) A failure to continue seasonal employment of a qualified disadvantaged individual due to a substantial reduction in the regular seasonal trade or business operations of the qualified taxpayer.

(v) A failure to continue the seasonal 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 seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and an employee shall not be treated as terminated by either of the following:

(i) A transaction to which Section 381(a) of the Internal Revenue Code applies, if the employee continues to be employed by the acquiring corporation.

(ii) 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 income 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 tax for the taxpayer's second income year.

(e) In the case of an organization to which Section 593 of the Internal Revenue Code applies, and a regulated investment company or a real estate investment trust subject to taxation under this part, rules similar to the rules provided in Section 46(e) and Section 46(h) of the Internal Revenue Code shall apply.

(f) 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 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 "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.

(h) (1) The amount of credit otherwise allowed under this section and Section 23645, including any prior year carryovers, that may reduce the "tax" for the income 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 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), 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 income years, as if it were an amount exceeding the "tax" for the income 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. 15. Section 24416 of the Revenue and Taxation Code is amended to read:

24416. Except as provided in Section 24416.1, 24416.2, 24416.4, 24416.5, or 24416.6, a net operating loss deduction shall be allowed in computing net income under Section 24341 and shall be determined in accordance with Section 172 of the Internal Revenue Code, except as otherwise provided.

(a) (1) Net operating losses attributable to income years beginning before January 1, 1987, shall not be allowed.

(2) A net operating loss shall not be carried forward to any income year beginning before January 1, 1987.

(b) (1) Except as provided in paragraphs (2) and (3), the provisions of Section 172(b)(2) of the Internal Revenue Code, relating to the amount of carryovers, shall be modified so that 50 percent of the entire amount of the net operating loss for any income year shall not be eligible for carryover to any subsequent income year.

(2) In the case of a taxpayer who has a net operating loss in an income year beginning on or after January 1, 1994, and who operates a new business during that income year, each of the following shall apply to each loss incurred during the first three income 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 (e).

(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 (e).

(ii) With respect to the portion of the net operating loss that 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 an income year beginning on or after January 1, 1994, and who operates an eligible small business during that income 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 income years specified in paragraph (1) of subdivision (e).

(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 income years following the income 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 income years following the income 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 an income 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 income years of the new business.

(5) In the case of a taxpayer who has a net operating loss in an income 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 paragraph (2), 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, "net loss" means the amount of net loss after application of Sections 465 and 469 of the Internal Revenue Code.

(c) For any income year in which the taxpayer has in effect a water's-edge election under Section 25110, the deduction of a net operating loss carryover shall be denied to the extent that the net operating loss carryover was determined by taking into account the income and factors of an affiliated corporation in a combined report whose income and apportionment factors would not have been taken into account if a water's-edge election under Section 25110 had been in effect for the income year in which the loss was incurred.

(d) Net operating loss carrybacks shall not be allowed.

(e) (1) Except as provided in paragraphs (2), (3), and (4), for each income year beginning on or after January 1, 1987, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute "five income years" in lieu of "20 taxable years."

(2) In the case of a "new business," the "five income years" referred to in paragraph (1) shall be modified to read as follows:

(A) "Eight income years" for a net operating loss attributable to the first income year of that new business.

(B) "Seven income years" for a net operating loss attributable to the second income year of that new business.

(C) "Six income years" for a net operating loss attributable to the third income year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to income years beginning in 1991.

(B) By two years for a net operating loss attributable to income years beginning prior to January 1, 1991.

(4) The net operating loss attributable to income years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 income years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the income year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) "Eligible 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 income year.

(2) Except as provided in subdivision (g), "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 an S corporation, paragraphs (1) and (2) shall be applied to the partnership or S corporation.

(g) 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 income 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 the taxpayer under either Section 267 or 318 of the Internal Revenue Code.

(6) "Acquire" shall include any transfer, whether or not for consideration.

(7) (A) For income 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.

(h) For purposes of corporations whose net income is determined under Chapter 17 (commencing with Section 25101), Section 25108 shall apply to each of the following:

(1) The amount of net operating loss incurred in any income year which may be carried forward to another income year.

(2) The amount of any loss carry forward which may be deducted in any income year.

(i) The provisions of Section 172(b)(1)(D) of the Internal Revenue Code, relating to bad debt losses of commercial banks, shall not be applicable.

(j) 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.

(k) 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.

(*l*) The amendments made by the act adding this subdivision shall be operative for income years beginning on or after January 1, 1997.

SEC. 16. Section 24416.1 of the Revenue and Taxation Code is amended to read:

24416.1. (a) A qualified taxpayer, as defined in Section 24416.2, 24416.4, 24416.5, or 24416.6, may elect to take the deduction provided by Section 172 of the Internal Revenue Code, relating to the net operating loss deduction, as modified by Section 24416, in computing net income under Section 24341, with the following exceptions to Section 24416:

(1) Subdivision (a) of Section 24416, relating to years in which allowable losses are sustained, shall not be applicable.

(2) Subdivision (b) of Section 24416, relating to the 50-percent reduction of losses, shall not be applicable.

(3) The provisions of subparagraphs (B) and (C) of Section 172 (b) (1) of the Internal Revenue Code shall not apply. To the extent applicable to California law, net operating losses attributable to entities with losses described by Section 172(b)(1)(J) shall be applied in accordance with Section 172(b)(1)(A) and (B) of the Internal Revenue Code.

(b) Corporations whose income is subject to the provisions of Section 25101 or 25101.15 shall make the computations required by Section 25108.

(c) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred and shall be irrevocable. In addition to the exceptions specified in subdivision (a), Section 24416.2, 24416.4, 24416.5, or 24416.6, as appropriate, shall be applicable.

(d) Any carryover of a net operating loss sustained by a qualified taxpayer, as defined in subdivision (a) or (b) of Section 24416.2 as that section read immediately prior to January 1, 1997, shall, if previously elected, continue to be a deduction, as provided in subdivision (a),

applied as if the provisions of subdivision (a) or (b) of Section 24416.2, as that section read prior to January 1, 1997, still applied.

SEC. 17. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. (a) The term "qualified taxpayer" as used in Section 24416.1 includes 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. For purposes of this subdivision, all of the following shall apply:

(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 taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 24416.4, 24416.5, or 24416.6 as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) 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 (b) shall be included in the election under Section 24416.1.

SEC. 17.5. Section 24416.2 of the Revenue and Taxation Code is amended to read:

24416.2. (a) The term "qualified taxpayer" as used in Section 24416.1 Includes 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. For purposes of this subdivision, all of the following shall apply:

(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 subdivision as follows:

(i) Loss shall be apportioned to the enterprise 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 enterprise 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 enterprise zone as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(C) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the enterprise 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 enterprise zone

in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this subdivision as follows:

(i) Business income shall be apportioned to the enterprise zone by multiplying the 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. For purposes of this clause:

(I) 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 enterprise 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.

(II) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise 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.

(ii) 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.

(3) The changes made to this subdivision by the act adding this paragraph shall apply to income years beginning on or after January 1, 1998.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section which applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 24416.4, 24416.5, or 24416.6 as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) 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 (b) shall be included in the election under Section 24416.1.

SEC. 18. Section 24416.4 is added to the Revenue and Taxation Code, to read:

24416.4. (a) The term "qualified taxpayer" as used in Section 24416.1 includes 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. For purposes of this subdivision, all of the following shall apply:

(1) 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.

(2) 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.

(3) "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) of Part 11, modified as follows:

(A) 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 2.

(B) "The Los Angeles Revitalization Zone" shall be substituted for "this state."

(4) 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 subdivision (c).

(5) 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 paragraph (2) and allowing a net operating loss deduction.

(6) 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 2.

(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.

(7) "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.

(b) This section 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 section.

(c) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (d).

(d) If a taxpayer is eligible to qualify under this section and either Section 24416.2, 24416.5, or 24416.6 as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which section is to apply to the taxpayer.

(e) Notwithstanding Section 24416, the amount of the loss determined under this section or Section 24416.2, 24416.5, or 24416.6

shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (c) shall be included in the election under Section 24416.1.

(f) This section shall cease to be operative on December 1, 1998. However, any unused net operating loss may continue to be carried over to following years as provided in this section.

SEC. 19. Section 24416.5 is added to the Revenue and Taxation Code, to read:

24416.5. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, the term "qualified taxpayer" as used in Section 24416.1 includes a taxpayer engaged in the conduct of a trade or business within a LAMBRA. For purposes of this subdivision, all of the following shall apply:

(1) 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.

(2) 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.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(4) "Taxpayer" means a bank or 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. For purposes of this paragraph, all of the following shall apply:

(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 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 are 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 that first commences doing business in the LAMBRA during the income 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 income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(5) "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:

(A) 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 2.

(B) "The LAMBRA" shall be substituted for "this state."

(6) 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:

(A) 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 2.

(B) "The LAMBRA" shall be substituted for "this state."

(C) 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.

(7) "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.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 24416.2, 24416.4, or 24416.6 as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 24416, the amount of the loss determined under this section or Section 24416.2, 24416.4, or 24416.6 shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (b) shall be included in the election under Section 24416.1.

SEC. 19.5. Section 24416.5 is added to the Revenue and Taxation Code, to read:

24416.5. (a) For each income year beginning on or after January 1, 1995, and before January 1, 2003, the term "qualified taxpayer" as used in Section 24416.1 includes a taxpayer engaged in the conduct of a trade or business within a LAMBRA. For purposes of this subdivision, all of the following shall apply:

(1) 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.

(2) 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.

(3) "LAMBRA" means a local agency military base recovery area designated in accordance with Section 7114 of the Government Code.

(4) "Taxpayer" means a bank or 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. For purposes of this paragraph, all of the following shall apply:

(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 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 are 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 that first commences doing business in the LAMBRA during the income 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 income year that the taxpayer was doing business in the LAMBRA and the denominator of which is 12.

(5) "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 for purposes of this section as follows:

(A) 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 2.

(B) "The LAMBRA" shall be substituted for "this state."

(6) A net operating loss carryover shall be a deduction only with respect to the taxpayer's business income attributable to a LAMBRA.

(7) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the LAMBRA. 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 LAMBRA in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified as follows:

(A) Business income shall be apportioned to a LAMBRA 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. For purposes of this clause:

(i) 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 LAMBRA 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.

(ii) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the LAMBRA 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.

(B) 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 the limitation specified in subparagraph (D) and allowing a net operating loss deduction.

(8) "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.

(b) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (c).

(c) If a taxpayer is eligible to qualify under this section and either Section 24416.2, 24416.4, or 24416.6 as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which section is to apply to the taxpayer.

(d) Notwithstanding Section 24416, the amount of the loss determined under this section or Section 24416.2, 24416.4, or 24416.6 shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (b) shall be included in the election under Section 24416.1.

(e) This section shall apply to income years beginning on and after January 1, 1998.

SEC. 20. Section 24416.6 is added to the Revenue and Taxation Code, to read:

24416.6. (a) For each income year beginning on or after January 1, 1998, the term "qualified taxpayer" as used in Section 24416.1 includes a corporation that meets both of the following:

(1) 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.

(2) 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 pass-through entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level.

(b) For purposes of subdivision (a), all of the following shall apply:

(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 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.

(2) "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 section as follows:

(A) 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 2.

(B) "The targeted tax area" shall be substituted for "this state."

(3) 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 section as follows:

(A) 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 2.

(B) "The targeted tax area" shall be substituted for "this state."

(4) If a loss carryover is allowable pursuant to this section 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 paragraph (2).

(5) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(c) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (e).

(d) If a taxpayer is eligible to qualify under this section and either Section 24416.2, 24416.4, or 24416.5 as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which section is to apply to the taxpayer.

(e) Notwithstanding Section 24416, the amount of the loss determined under this section or Section 24416.2, 24416.4, or 24416.5 shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (c) shall be included in the election under Section 24416.1.

SEC. 20.5. Section 24416.6 is added to the Revenue and Taxation Code, to read:

24416.6. (a) For each income year beginning on or after January 1, 1998, the term "qualified taxpayer" as used in Section 24416.1 includes a corporation that meets both of the following:

(1) 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.

(2) 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 pass-through entity, the determination of whether a taxpayer is a qualified taxpayer shall be made at the entity level.

(b) For purposes of subdivision (a), all of the following shall apply:

(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 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.

(2) "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 section as follows:

(A) 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 2.

(B) "The targeted tax area" shall be substituted for "this state."

(3) 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.

(4) Attributable income is that portion of the taxpayer's California source business income that is apportioned to the targeted tax area. 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 targeted tax area in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this subdivision as follows:

(A) Business income shall be apportioned to the targeted tax area by multiplying the 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. For purposes of this clause:

(i) 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 targeted tax area 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.

(ii) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the targeted tax area 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.

(B) 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 subparagraph (B) and allowing a net operating loss deduction.

(5) "Targeted tax area expiration date" means the date the targeted tax area designation expires, is revoked, is no longer binding, or becomes inoperative.

(c) A taxpayer who qualifies as a "qualified taxpayer" under one or more sections 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 section that applies to that taxpayer with respect to that net operating loss. If the taxpayer is eligible to qualify under more than one section, the designation is to be made after taking into account subdivision (e).

(d) If a taxpayer is eligible to qualify under this section and either Section 24416.2, 24416.4, or 24416.5 as a "qualified taxpayer," with respect to a net operating loss in an income year, the taxpayer shall designate which section is to apply to the taxpayer.

(e) Notwithstanding Section 24416, the amount of the loss determined under this section or Section 24416.2, 24416.4, or 24416.5 shall be the only net operating loss allowed to be carried over from that income year and the designation under subdivision (c) shall be included in the election under Section 24416.1.

(f) This section shall apply to income years beginning on or after January 1, 1998.

SEC. 21. (a) Section 1.5 of this bill incorporates amendments to Section 17053.34 of the Revenue and Taxation Code proposed by both this bill and AB 2798. Section 1.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 17053.34 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2798, in which case Section 17053.34 of the Revenue and Taxation Code as amended by AB 2798, shall remain operative only until the operative date of this bill, at which time Section 1.5 of this bill shall become operative, and Section 1 of this bill shall not become operative. However, if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the November 3, 1998, general election, Section 1.5 of this bill shall be deemed to have been inoperative from the effective date of this bill, and Section 1 of this bill shall be deemed to have been operative from that same date.

(b) (1) Section 17053.46 of the Revenue and Taxation Code, as amended by Section 2 of this bill, shall be deemed to be inoperative from the effective date of this bill if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the November 3, 1998, general election. In that event, Section 17053.46 of the Revenue and Taxation Code, as amended by Section 2.3 of this bill, shall instead be deemed to have been operative from the effective date of this bill.

(2) Section 2.5 of this bill incorporates amendments to Section 17053.46 of the Revenue and Taxation Code proposed by both this bill and AB 3. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 17053.46 of the Revenue and Taxation Code, (3) Section 2 of this bill is operative, and (4) this bill is enacted after AB 3, in which case Section 17053.46 of the Revenue and Taxation Code, as amended by Section 2 of this bill, shall remain operative only until the operative date of AB 3, at which time Section 2.5 of this bill shall become operative.

(3) Section 2.7 of this bill incorporates amendments to Section 17053.46 of the Revenue and Taxation Code proposed by both this bill and AB 3. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 17053.46 of the Revenue and Taxation Code, (3) Section 2.3 of this bill is operative, and (4) this bill is enacted after AB 3, in which case Section 17053.46 of the Revenue and Taxation Code, as amended by Section 2.3 of this bill, shall remain operative only until the operative date of AB 3, at which time Section 2.7 of this bill shall become operative.

(c) Section 3.5 of this bill incorporates amendments to Section 17053.47 of the Revenue and Taxation Code proposed by both this bill and AB 2798. Section 3.5 of this bill shall only become operative if (1)

both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 17053.47 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2798, in which case Section 17053.47 of the Revenue and Taxation Code as amended by AB 2798, shall remain operative only until the operative date of this bill, at which time Section 3.5 of this bill shall become operative, and Section 3 of this bill shall not become operative. However, if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the November 3, 1998, general election, Section 3.5 of this bill shall be deemed to have been inoperative from the effective date of this bill, and Section 3 of this bill shall be deemed to have been operative from that same date.

(d) Section 4.5 of this bill incorporates amendments to Section 17053.74 of the Revenue and Taxation Code proposed by both this bill and AB 2798. Section 4.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 17053.74 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2798, in which case Section 17053.74 of the Revenue and Taxation Code as amended by AB 2798, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Section 4 of this bill shall not become operative. However, if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the November 3, 1998, general election, Section 4.5 of this bill shall be deemed to have been inoperative from the effective date of this bill, and Section 4 of this bill shall be deemed to have been operative from that same date.

(e) Section 11.5 of this bill incorporates amendments to Section 23622.7 of the Revenue and Taxation Code proposed by both this bill and AB 2798. Section 11.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 23622.7 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2798, in which case Section 23622.7 of the Revenue and Taxation Code as amended by AB 2798, shall remain operative only until the operative date of this bill, at which time Section 11.5 of this bill shall become operative, and Section 11 of this bill shall not become operative. However, if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the November 3, 1998, general election, Section 11.5 of this bill shall be deemed to have been inoperative from the effective date of this bill, and Section 11 of this bill shall be deemed to have been operative from that same date.

(f) Section 12.5 of this bill incorporates amendments to Section 23622.8 of the Revenue and Taxation Code proposed by both this bill and AB 2798. Section 12.5 of this bill shall only become operative if

(1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 23622.8 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2798, in which case Section 23622.8 of the Revenue and Taxation Code as amended by AB 2798, shall remain operative only until the operative date of this bill, at which time Section 12.5 of this bill shall become operative, and Section 12 of this bill shall not become operative. However, if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the November 3, 1998, general election, Section 12.5 of this bill shall be deemed to have been inoperative from the effective date of this bill, and Section 12 of this bill shall be deemed to have been operative from that same date.

(g) Section 13.5 of this bill incorporates amendments to Section 23634 of the Revenue and Taxation Code proposed by both this bill and AB 2798. Section 13.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 23634 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2798, in which case Section 23634 of the Revenue and Taxation Code as amended by AB 2798, shall remain operative only until the operative date of this bill, at which time Section 13.5 of this bill shall become operative, and Section 13 of this bill shall not become operative. However, if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the November 3, 1998, general election, Section 13.5 of this bill shall be deemed to have been inoperative from the effective date of this bill, and Section 13 of this bill shall be deemed to have been operative from that same date.

(h) (1) Section 23646 of the Revenue and Taxation Code, as amended by Section 14 of this bill, shall be deemed to be inoperative from the effective date of this bill if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the November 3, 1998, general election. In that event, Section 23646 of the Revenue and Taxation Code, as amended by Section 14.3 of this bill, shall instead be deemed to have been operative from the effective date of this bill.

(2) Section 14.5 of this bill incorporates amendments to Section 23646 of the Revenue and Taxation Code proposed by both this bill and AB 3. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 23646 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 3, in which case Section 23646 of the Revenue and Taxation Code, as amended by Section 14 of this bill, shall remain operative only until the operative date of AB 3, at which time Section 14.5 of this bill shall become operative.

(3) Section 14.7 of this bill incorporates amendments to Section 23646 of the Revenue and Taxation Code proposed by both this bill and AB 3. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, but this bill becomes operative first, (2) each bill amends Section 23646 of the Revenue and Taxation Code, (3) Section 14.3 of this bill is operative, and (4) this bill is enacted after AB 3, in which case Section 23646 of the Revenue and Taxation Code, as amended by Section 14.3 of this bill, shall remain operative only until the operative date of AB 3, at which time Section 14.7 of this bill shall become operative.

SEC. 22. (a) Section 7.5 of this bill amends Section 17276.2 of the Revenue and Taxation Code, and Sections 9.5 and 10.5 of this bill add Sections 17276.5 and 17276.6 to the Revenue and Taxation Code to contain provisions currently set forth in Section 17276.2 of the Revenue and Taxation Code. Sections 7.5, 9.5, and 10.5 of this bill also include amendments to Section 17276.2 of the Revenue and Taxation Code made by AB 2798. Sections 7.5, 9.5, and 10.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 17276.2 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2798, in which case Section 17276.2 of the Revenue and Taxation Code as amended by AB 2798, shall remain operative only until the operative date of this bill, at which time Sections 7.5, 9.5, and 10.5 of this bill shall become operative, and Sections 7, 9, and 10 of this bill shall not become operative. However, if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the November 3, 1998, general election, Sections 7.5, 9.5, and 10.5 of this bill shall be deemed to have been inoperative from the effective date of this bill, and Sections 7, 9, and 10 of this bill shall be deemed to have been operative from that same date.

(b) Section 17.5 of this bill amends Section 24416.2 of the Revenue and Taxation Code, and Sections 19.5 and 20.5 of this bill add Sections 24416.5 and 24416.6 to the Revenue and Taxation Code to contain provisions currently set forth in Section 24416.2 of the Revenue and Taxation Code. Sections 17.5, 19.5, and 20.5 of this bill also include amendments to Section 24416.2 of the Revenue and Taxation Code made by AB 2798. Sections 17.5, 19.5, and 20.5 of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 24416.2 of the Revenue and Taxation Code, and (3) this bill is enacted after AB 2798, in which case Section 24416.2 of the Revenue and Taxation Code as amended by AB 2798, shall remain operative only until the operative date of this bill, at which time Sections 17.5, 19.5, and 20.5 of this bill shall become operative, and Sections 17, 19, and 20 of this bill shall not become operative. However, if any provision of Chapter 323 of the Statutes of 1998 is deemed to be inoperative by reason of the statewide electorate's approval of a ballot measure at the

November 3, 1998, general election, Sections 17.5, 19.5, and 20.5 of this bill shall be deemed to have been inoperative from the effective date of this bill, and Sections 17, 19, and 20 of this bill shall be deemed to have been operative from that same date.

SEC. 23. The Legislature finds and declares all of the following:

(a) (1) Except as otherwise provided in paragraph (2), the amendments made by this act to Sections 17053.34, 17053.46, 17053.47, 17053.74, 23622.7, 23622.8, 23634, and 23646 of the Revenue and Taxation Code shall be operative for taxable and income years beginning on or after January 1, 1998.

(2) The amendments made by this act to paragraph (1) of subdivision (b) of Sections 17053.34, 17053.46, 17053.47, 17053.74, 23622.7, 23622.8, 23634, and 23646 of the Revenue and Taxation Code are consistent with the intent of the acts that enacted those sections, and therefore shall apply from the original effective date of those acts.

(b) Sections 17276.4 and 24416.4 of the Revenue and Taxation Code as added by this act shall be operative for taxable and income years ending after December 31, 1997.

(c) Any reference in this section to amendments made by this act, or sections added by this act, shall be construed to include changes made by other acts of the Legislature that are incorporated as provided in Section 21 or 22.

SEC. 24. The Legislature finds and declares that this act fulfills a statewide public purpose by providing for the proper and intended application of statutory incentives for renewed economic development in depressed areas of the state.

SEC. 25. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect. However, unless otherwise specifically provided in Section 23 of this act, its provisions shall apply to taxable and income years beginning on or after January 1, 1998.

CHAPTER 1040

An act to amend Sections 33370, 33381, and 62000.14 of, to repeal Sections 33371 and 33372 of, the Education Code, relating to Indian education centers, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Notwithstanding any other provision of law, all sections of the Education Code and of the California Code of

Regulations relative to California Indian education centers that became inoperative on January 1, 1997, pursuant to Section 62000.14 of the Education Code, shall be reactivated on the date this act takes effect.

SEC. 2. Section 33370 of the Education Code is amended to read:

33370. (a) There is hereby created within the State Department of Education an American Indian Education Unit, which shall provide administrative oversight of American Indian education programs established by the state and shall study and identify the cultural and educational disadvantages affecting American Indian children in the present existing public school system.

(b) The Superintendent of Public Instruction shall appoint an American Indian Education Unit Coordinator who shall be responsible for the American Indian Education Unit.

SEC. 3. Section 33371 of the Education Code is repealed.

SEC. 4. Section 33372 of the Education Code is repealed.

SEC. 5. Section 33381 of the Education Code is amended to read:

33381. The California Indian education centers established pursuant to this article shall serve as educational resource centers in American Indian communities to the American Indian pupils, parents, and the public schools. The centers shall be designed to:

(a) Improve the academic achievement of American Indian pupils with particular emphasis on reading and mathematics.

(b) Improve the self-concept of American Indian pupils and adults.

(c) Increase the employment of American Indian adults.

(d) Serve as a center for related community activities.

(e) Provide tutorial assistance to pupils in reading and mathematics.

(f) Provide individual and group counseling to pupils and adults related to personal adjustment, academic progress, and vocational planning.

(g) Provide coordinated programs with the public schools.

(h) Provide a neutral location for parent-teacher conferences.

(i) Provide a focus for summer recreational sports and academic experience.

(j) Provide adult classes and activities.

(k) Provide college-related training programs for prospective American Indian teachers.

(*l*) Provide libraries and other related educational material.

SEC. 6. Section 62000.14 of the Education Code is amended to read:

62000.14. The California Indian Education Center Program shall sunset on January 1, 2002.

SEC. 7. The Superintendent of Public Instruction shall allocate any funds appropriated from the General Fund to the State Department of Education in the Budget Act of 1997–98, and each Budget Act thereafter, for the purposes of the California Indian

Education Center Program established pursuant to Article 6 (commencing with Section 33380) of Chapter 2 of Part 20 of the Education Code, as follows:

(a) For the establishment of new centers pursuant to Section 33383 of the Education Code on the basis of unserved need.

(b) For educational technology for centers including, but not limited to, installation and maintenance of high-speed telephone lines, computer hardware and software, and Internet access.

(c) For the upgrade and replacement of vehicles used for transportation at centers.

(d) For existing centers for staff development, coordinated programs with the schools, child care, adult education, and teen pregnancy prevention, and direct services including, but not limited to, literacy, reading reinforcement, mathematics enrichment, tutoring, and instructional materials.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that the provisions of law relative to California Indian education centers that became inoperative on January 1, 1997, be reactivated as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 1041

An act to add and repeal Section 2890 of the Public Utilities Code, relating to public utilities.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. It is the intent of the Legislature to do all of the following:

(a) Reduce the inclusion of unauthorized charges on a telephone subscriber's bill, a practice known as "cramming."

(b) Clarify the rights and remedies available to California consumers with regard to telephone billing disputes.

(c) Provide California consumers with a consistent, effective, and easily accessible means of resolving disputes over unauthorized, inadvertent, misleading, or fraudulent charges that appear on their telephone bills.

(d) Encourage the verification of telephone charges.

(e) It is the intent of the Legislature that this act and Assembly Bill 2142 of the 1997–98 Regular Session be read together and serve as a deterrence to cramming.

SEC. 2. Section 2890 is added to the Public Utilities Code, to read:

2890. (a) A telephone bill may only contain charges for communications-related goods and services, including, but not limited to, wired and wireless communications service, Internet access, video service, information service, telephone equipment that is connected to a telecommunications network, and cable set top boxes. The commission may permit a billing telephone company to include in the same envelope with a subscriber's telephone bill, a separate bill for noncommunications-related goods and services. The commission may also specify the kinds of noncommunications-related goods and services that may be billed in this manner.

(b) A telephone bill, and a bill for noncommunications-related goods and services that is included in the same envelope as a telephone bill, may only contain charges for products or services, the purchase of which the subscriber has authorized.

(c) Where a person or corporation obtains a written order for a product or service, the written order shall be a separate document from any solicitation material. The sole purpose of the document is to explain the nature and extent of the transaction. Written orders and written solicitation materials shall be unambiguous, legible, and in a minimum 10-point type. Written or oral solicitation materials used to obtain an order for a product or service shall be in the same language as the written order. Written orders may not be used as entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

(d) The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long distance telephone service within a local access and transport area (intraLATA), long distance telephone service between local access and transport areas (interLATA), and international telephone service.

(e) (1) A billing telephone company shall clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge on a subscriber's telephone bill. A billing telephone company may not bill for a person, corporation, or billing agent, unless that person, corporation or billing agent complies with paragraph (2).

(2) Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill, or on a bill for noncommunications-related goods and services that is included in the same envelope as a telephone bill, shall do all of the following:

(A) Include, or cause to be included, in the bill the amount being charged for each product or service, including any taxes or

surcharges, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.

(B) Include, or cause to be included, for each entity that charges for a product or service, information with regard to how to resolve any dispute about that charge, including the name, address, and telephone number of the party responsible for generating the charge and a description of the manner in which a dispute regarding the charge may be addressed, including the appropriate telephone number of the commission that a customer may use to register a complaint.

(C) Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about its charges. The person, corporation, or billing agent that generates a charge may also contract with a third party, including, but not limited to, the billing telephone corporation, to provide that service on behalf of the person, corporation or billing agent.

(D) Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. If recurring charges arise from the use of those subscriber-initiated services, the recurring charges are subject to this section.

(f) If an entity responsible for generating a charge on a telephone bill, or on a bill for noncommunications-related goods and services that is included in the same envelope as a telephone bill, receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

(g) For purposes of this section, "billing agent" is the clearinghouse or billing aggregator.

(h) 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. 3. Section 2890 is added to the Public Utilities Code, to read:

2890. (a) A telephone bill may only contain charges for products or services, the purchase of which the subscriber has authorized.

(b) Where a person or corporation obtains a written order for a product or service, the written order shall be a separate document from any solicitation material. The sole purpose of the document is to explain the nature and extent of the transaction. Written orders and written solicitation materials shall be unambiguous, legible, and

in a minimum 10-point type. Written or oral solicitation materials used to obtain an order for a product or service shall be in the same language as the written order. Written orders may not be used as entry forms for sweepstakes, contests, or any other program that offers prizes or gifts.

(c) The commission may only permit a subscriber's local telephone service to be disconnected for nonpayment of charges relating to the subscriber's basic local exchange telephone service, long distance telephone service within a local access and transport area (intraLATA), long distance telephone service between local access and transport areas (interLATA), and international telephone service.

(d) (1) A billing telephone company shall clearly identify, and use a separate billing section for, each person, corporation, or billing agent that generates a charge on a subscriber's telephone bill. A billing telephone company may not bill for a person, corporation, or billing agent, unless that person, corporation or billing agent complies with paragraph (2).

(2) Any person, corporation, or billing agent that charges subscribers for products or services on a telephone bill shall do all of the following:

(A) Include, or cause to be included, in the telephone bill the amount being charged for each product or service, including any taxes or surcharges, and a clear and concise description of the service, product, or other offering for which a charge has been imposed.

(B) Include, or cause to be included, for each entity that charges for a product or service, information with regard to how to resolve any dispute about that charge, including the name, address, and telephone number of the party responsible for generating the charge and a description of the manner in which a dispute regarding the charge may be addressed, including the appropriate telephone number of the commission that a subscriber may use to register a complaint.

(C) Establish, maintain, and staff a toll-free telephone number to respond to questions or disputes about its charges. The person, corporation, or billing agent that generates a charge may also contract with a third party, including, but not limited to, the billing telephone corporation, to provide that service on behalf of the person, corporation or billing agent.

(D) Provide a means for expeditiously resolving subscriber disputes over charges for a product or service, the purchase of which was not authorized by the subscriber. In the case of a dispute, there is a rebuttable presumption that an unverified charge for a product or service was not authorized by the subscriber and that the subscriber is not responsible for that charge. With regard to direct dialed telecommunications services, evidence that a call was dialed is prima facie evidence of authorization. If recurring charges arise

from the use of those subscriber-initiated services, the recurring charges are subject to this section.

(e) If an entity responsible for generating a charge on a telephone bill receives a complaint from a subscriber that the subscriber did not authorize the purchase of the product or service associated with that charge, the entity, not later than 30 days from the date on which the complaint is received, shall verify the subscriber's authorization of that charge or undertake to resolve the billing dispute to the subscriber's satisfaction.

(f) For purposes of this section, "billing agent" is the clearinghouse or billing aggregator.

(g) This section shall become operative on January 1, 2001.

CHAPTER 1042

An act to add Section 383.7 to the Public Utilities Code, relating to public utilities.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 383.7 is added to the Public Utilities Code, to read:

383.7. (a) Notwithstanding Provision 1 of Item 3360-001-0465 of Section 2.00 of the Budget Act of 1998 or paragraph (1) of subdivision (e) of Section 383.5, during the period beginning April 1, 1998, and ending September 30, 1998, customer credits offered pursuant to paragraph (1) of subdivision (e) of Section 383.5 shall be available for the purchase and delivery of electrical energy and associated customer credits to eligible end use customers, in accordance with commission guidelines, where the energy was generated by an in-state investor-owned utility that is not required to sell into the Power Exchange, or a facility that is owned by one or more in-state municipal utilities and is not certified under Section 292.2904 of Title 18 of the Code of Federal Regulations as a qualifying small power production facility. After September 30, 1998, customer credits offered pursuant to paragraph (1) of subdivision (e) of Section 383.5 shall be available only for end user purchase and use of electricity produced by in-state renewable generation technologies, as defined in Section 383.5.

(b) Nothing in this section is intended to limit the commission's authority to revise its customer credit subaccount guidelines to implement the program changes contained herein.

CHAPTER 1043

An act to amend Sections 4512, 4596.5, 4640, 4646, 4646.5, 4648, 4648.1, 4681.1, 4685, 4689, 4712, 4712.5, 4731, 4740, 4741, 4742, 4743, 4744, 4745, and 4747 of, to add Sections 4685.1, 4689.7, 4697, 4742.1, and 4847 to, to add and repeal Section 4685.5 of, to repeal Section 4541 of, and to repeal and add Section 4696.1 of, the Welfare and Institutions Code, relating to human services, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 4512 of the Welfare and Institutions Code is amended to read:

4512. As used in this part:

(a) "Developmental disability" means a disability which originates before an individual attains age 18, continues, or can be expected to continue, indefinitely, and constitutes a substantial disability for that individual. As defined by the Director of Developmental Services, in consultation with the Superintendent of Public Instruction, this term shall include mental retardation, cerebral palsy, epilepsy, and autism. This term shall also include disabling conditions found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, but shall not include other handicapping conditions that are solely physical in nature.

(b) "Services and supports for persons with developmental disabilities" means specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives. The determination of which services and supports are necessary for each consumer shall be made through the individual program plan process. The determination shall be made on the basis of the needs and preferences of the consumer or, when appropriate, the consumer's family, and shall include consideration of a range of service options proposed by individual program plan participants, the effectiveness of each option in meeting the goals stated in the individual program plan, and the cost-effectiveness of each option. Services and supports listed in the individual program plan may include, but are not limited to, diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training,

education, supported and sheltered employment, mental health services, recreation, counseling of the individual with a developmental disability and of his or her family, protective and other social and sociolegal services, information and referral services, follow-along services, adaptive equipment and supplies; advocacy assistance, including self-advocacy training, facilitation and peer advocates; assessment; assistance in locating a home; child care; behavior training and behavior modification programs; camping; community integration services; community support; daily living skills training; emergency and crisis intervention; facilitating circles of support; habilitation; homemaker services; infant stimulation programs; paid roommates; paid neighbors; respite; short-term out-of-home care; social skills training; specialized medical and dental care; supported living arrangements; technical and financial assistance; travel training; training for parents of children with developmental disabilities; training for parents with developmental disabilities; vouchers; and transportation services necessary to ensure delivery of services to persons with developmental disabilities. Nothing in this subdivision is intended to expand or authorize a new or different service or support for any consumer unless that service or support is contained in his or her individual program plan.

(c) Notwithstanding subdivision (a) and (b), for any organization or agency receiving federal financial participation under the federal Developmental Disabilities Assistance and Bill of Rights Act, as amended "developmental disability" and "services for persons with developmental disabilities" means such terms as defined in the federal act to the extent required by federal law.

(d) "Consumer" means a person who has a disability that meets the definition of developmental disability set forth in subdivision (a).

(e) "Natural supports" means personal associations and relationships typically developed in the community that enhance the quality and security of life for people, including, but not limited to, family relationships; friendships reflecting the diversity of the neighborhood and the community; associations with fellow students or employees in regular classrooms and workplaces; and associations developed through participation in clubs, organizations, and other civic activities.

(f) "Circle of support" means a committed group of community members, which may include family members, meeting regularly with an individual with developmental disabilities in order to share experiences, promote autonomy and community involvement, and assist the individual in establishing and maintaining natural supports. Such a circle of support generally includes a plurality of members who neither provide nor receive services or supports for persons with developmental disabilities and who do not receive payment for participation in the circle of support.

(g) "Facilitation" means the use of modified or adapted materials, special instructions, equipment, or personal assistance by an

individual, such as assistance with communications, which will enable a consumer to understand and participate to the maximum extent possible in the decisions and choices which effect his or her life.

(h) "Family support services" means services and supports that are provided to a child with developmental disabilities or his or her family and that contribute to the ability of the family to reside together.

(i) "Voucher" means any authorized alternative form of service delivery in which the consumer or family member is provided with a payment, coupon, chit, or other form of authorization which enables the consumer or family member to choose his or her own service provider.

(j) "Planning team" means the individual with developmental disabilities, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer, the authorized representative, including those appointed pursuant to Section 4590 and subdivision (e) of Section 4705, one or more regional center representatives, including the designated regional center service coordinator pursuant to subdivision (b) of Section 4640.7, and any individual, including a service provider, invited by the consumer, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer, or the authorized representative, including those appointed pursuant to Section 4590 and subdivision (e) of Section 4705.

(k) "Stakeholder organizations" means statewide organizations representing the interests of consumers, family members, service providers, and statewide advocacy organizations.

SEC. 2. Section 4541 of the Welfare and Institutions Code is repealed.

SEC. 3. Section 4596.5 of the Welfare and Institutions Code, as amended by Section 33 of Chapter 310 of the Statutes of 1998, 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 "Looking at Life Quality Handbook" or subsequent revisions developed by the department.

(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 September 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. 4. Section 4640 of the Welfare and Institutions Code is amended to read:

4640. (a) Contracts between the department and regional centers shall specify the service area and the categories of persons that regional centers shall be expected to serve and the services and supports to be provided.

(b) In order to ensure uniformity in the application of the definition of developmental disability contained in this division, the Director of Developmental Services shall, by March 1, 1977, issue regulations that delineate, by diagnostic category and degree of disability, those persons who are eligible for services and supports by regional centers. In issuing the regulations, the director shall invite and consider the views of regional center contracting agencies, the state council, and persons with a demonstrated and direct interest in developmental disabilities.

SEC. 5. Section 4646 of the Welfare and Institutions Code is amended to read:

4646. (a) It is the intent of the Legislature to ensure that the individual program plan and provision of services and supports by the regional center system is centered on the individual and the family of the individual with developmental disabilities and takes into account the needs and preferences of the individual and the family, where appropriate, as well as promoting community integration, independent, productive, and normal lives, and stable and healthy

environments. It is the further intent of the Legislature to ensure that the provision of services to consumers and their families be effective in meeting the goals stated in the individual program plan, reflect the preferences and choices of the consumer, and reflect the cost-effective use of public resources.

(b) The individual program plan is developed through a process of individualized needs determination. The individual with developmental disabilities and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, shall have the opportunity to actively participate in the development of the plan.

(c) An individual program plan shall be developed for any person who, following intake and assessment, is found to be eligible for regional center services. These plans shall be completed within 60 days of the completion of the assessment. At the time of intake, the regional center shall inform the consumer and, where appropriate, his or her parents, legal guardian or conservator, or authorized representative, of the services available through the local area board and the protection and advocacy agency designated by the Governor pursuant to federal law, and shall provide the address and telephone numbers of those agencies.

(d) Individual program plans shall be prepared jointly by the planning team. Decisions concerning the consumer's goals, objectives, and services and supports that will be included in the consumer's individual program plan and purchased by the regional center or obtained from generic agencies shall be made by agreement between the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative at the program plan meeting.

(e) Regional centers shall comply with the request of a consumer, or where appropriate, the request of his or her parents, legal guardian, or conservator, that a designated representative receive written notice of all meetings to develop or revise his or her individual program plan and of all notices sent to the consumer pursuant to Section 4710. The designated representative may be a parent or family member.

(f) If a final agreement regarding the services and supports to be provided to the consumer cannot be reached at a program plan meeting, then a subsequent program plan meeting shall be convened within 15 days, or later at the request of the consumer or, when appropriate, the parents, legal guardian, conservator, or authorized representative or when agreed to by the planning team. Additional program plan meetings may be held with the agreement of the regional center representative and the consumer or, where appropriate, the parents, legal guardian, conservator, or authorized representative.

(g) An authorized representative of the regional center and the consumer or, where appropriate, his or her parents, legal guardian, or conservator, shall sign the individual program plan prior to its implementation. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with all components of the plan, they may indicate that disagreement on the plan. Disagreement with specific plan components shall not prohibit the implementation of services and supports agreed to by the consumer or, where appropriate, his or her parents, legal guardian, or conservator. If the consumer or, where appropriate, his or her parents, legal guardian, or conservator, does not agree with the plan in whole or in part, he or she shall be sent written notice of the fair hearing rights, as required by Section 4701.

SEC. 6. Section 4646.5 of the Welfare and Institutions Code is amended to read:

4646.5. (a) The planning process for the individual program plan described in Section 4646 shall include all of the following:

(1) Gathering information and conducting assessments to determine the life goals, capabilities and strengths, preferences, barriers, and concerns or problems of the person with developmental disabilities. For children with developmental disabilities, this process should include a review of the strengths, preferences, and needs of the child and the family unit as a whole. Assessments shall be conducted by qualified individuals and performed in natural environments whenever possible. Information shall be taken from the consumer, his or her parents and other family members, his or her friends, advocates, providers of services and supports, and other agencies. The assessment process shall reflect awareness of, and sensitivity to, the lifestyle and cultural background of the consumer and the family.

(2) A statement of goals, based on the needs, preferences, and life choices of the individual with developmental disabilities, and a statement of specific, time-limited objectives for implementing the person's goals and addressing his or her needs. These objectives shall be stated in terms that allow measurement of progress or monitoring of service delivery. These goals and objectives should maximize opportunities for the consumer to develop relationships, be part of community life in the areas of community participation, housing, work, school, and leisure, increase control over his or her life, acquire increasingly positive roles in community life, and develop competencies to help accomplish these goals.

(3) When developing individual program plans for children, regional centers shall be guided by the principles, process, and services and support parameters set forth in Section 4685.

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider

or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies, and natural supports. The plan shall specify the approximate scheduled start date for services and supports and shall contain timelines for actions necessary to begin services and supports, including generic services.

(5) When agreed to by the consumer, the parents or legally appointed guardian of a minor consumer, or the legally appointed conservator of an adult consumer or the authorized representative, including those appointed pursuant to Section 4590 and subdivision (e) of Section 4705, a review of the general health status of the adult or child including a medical, dental, and mental health needs shall be conducted. This review shall include a discussion of current medications, any observed side effects, and the date of last review of the medication. Service providers shall cooperate with the planning team to provide any information necessary to complete the health status review. If any concerns are noted during the review, referrals shall be made to regional center clinicians or to the consumer's physician, as appropriate. Documentation of health status and referrals shall be made in the consumer's record by the service coordinator.

(6) A schedule of regular periodic review and reevaluation to ascertain that planned services have been provided, that objectives have been fulfilled within the times specified, and that consumers and families are satisfied with the individual program plan and its implementation.

(b) For all active cases, individual program plans shall be reviewed and modified by the planning team, through the process described in Section 4646, as necessary, in response to the person's achievement or changing needs, and no less often than once every three years. If the consumer or, where appropriate, the consumer's parents, legal guardian, or conservator requests an individual program plan review, the individual program shall be reviewed within 30 days after the request is submitted.

(c) (1) The department, with the participation of representatives of a statewide consumer organization, the Association of Regional Center Agencies, an organized labor organization representing service coordination staff, and the Organization of Area Boards shall prepare training material and a standard format and instructions for the preparation of individual program plans, which embodies an approach centered on the person and family.

(2) Each regional center shall use the training materials and format prepared by the department pursuant to paragraph (1).

(3) The department shall annually review a random sample of individual program plans at each regional center to assure that these plans are being developed and modified in compliance with Section 4646 and this section.

SEC. 7. Section 4648 of the Welfare and Institutions Code is amended to read:

4648. In order to achieve the stated objectives of a consumer's individual program plan, the regional center shall conduct activities including, but not limited to, all of the following:

(a) Securing needed services and supports.

(1) It is the intent of the Legislature that services and supports assist individuals with developmental disabilities in achieving the greatest self-sufficiency possible and in exercising personal choices. The regional center shall secure services and supports that meet the needs of the consumer, as determined in the consumer's individual program plan, and within the context of the individual program plan, the planning team shall give highest preference to those services and supports which would allow minors with developmental disabilities to live with their families, adult persons with developmental disabilities to live as independently as possible in the community, and that allow all consumers to interact with persons without disabilities in positive, meaningful ways.

(2) In implementing individual program plans, regional centers, through the planning team, shall first consider services and supports in natural community, home, work, and recreational settings. Services and supports shall be flexible and individually tailored to the consumer and, where appropriate, his or her family.

(3) A regional center may, pursuant to vendorization or a contract, purchase services or supports for a consumer from any individual or agency which the regional center and consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representatives, determines will best accomplish all or any part of that consumer's program plan.

(A) Vendorization or contracting is the process for identification, selection, and utilization of service vendors or contractors, based on the qualifications and other requirements necessary in order to provide the service.

(B) A regional center may reimburse an individual or agency for services or supports provided to a regional center consumer if the individual or agency has a rate of payment for vendored or contracted services established by the department, pursuant to this division, and is providing services pursuant to an emergency vendorization or has completed the vendorization procedures or has entered into a contract with the regional center and continues to comply with the vendorization or contracting requirements. The director shall adopt regulations governing the vendorization process to be utilized by the department, regional centers, vendors and the individual or agency requesting vendorization.

(C) Regulations shall include, but not be limited to: the vendor application process, and the basis for accepting or denying an application; the qualification and requirements for each category of services that may be provided to a regional center consumer through

a vendor; requirements for emergency vendorization; procedures for termination of vendorization; the procedure for an individual or an agency to appeal any vendorization decision made by the department or regional center.

(D) A regional center may vendorize a licensed facility for exclusive services to persons with developmental disabilities at a capacity equal to or less than the facility's licensed capacity. A facility already licensed on January 1, 1999, shall continue to be vendorized at their full licensed capacity until the facility agrees to vendorization at a reduced capacity.

(4) Notwithstanding subparagraph (B), a regional center may contract or issue a voucher for services and supports provided to a consumer or family at a cost not to exceed the maximum rate of payment for that service or support established by the department. If a rate has not been established by the department, the regional center may, for an interim period, contract for a specified service or support with, and establish a rate of payment for, any provider of the service or support necessary to implement a consumer's individual program plan. Contracts may be negotiated for a period of up to three years, with annual review and subject to the availability of funds.

(5) In order to ensure the maximum flexibility and availability of appropriate services and supports for persons with developmental disabilities, the department shall establish and maintain an equitable system of payment to providers of services and supports identified as necessary to the implementation of a consumers' individual program plan. The system of payment shall include provision for a rate to ensure that the provider can meet the special needs of consumers and provide quality services and supports in the least restrictive setting as required by law.

(6) The regional center and the consumer, or where appropriate, his or her parents, legal guardian, conservator, or authorized representative, including those appointed pursuant to Section 4590 or subdivision (e) of Section 4705, shall, pursuant to the individual program plan, consider all of the following when selecting a provider of consumer services and supports:

(A) A provider's ability to deliver quality services or supports which can accomplish all or part of the consumer's individual program plan.

(B) A provider's success in achieving the objectives set forth in the individual program plan.

(C) Where appropriate, the existence of licensing, accreditation, or professional certification.

(D) The cost of providing services or supports of comparable quality by different providers, if available.

(E) The consumer's or, where appropriate, the parents, legal guardian, or conservator of a consumer's choice of providers.

(7) No service or support provided by any agency or individual shall be continued unless the consumer or, where appropriate, his or her parents, legal guardian, or conservator, or authorized representative, including those appointed pursuant to Section 4590 or subdivision (e) of Section 4705, is satisfied and the regional center and the consumer or, when appropriate, the person's parents or legal guardian or conservator agree that planned services and supports have been provided, and reasonable progress toward objectives have been made.

(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

(9) (A) A regional center may, directly or through an agency acting on behalf of the center, provide placement in, purchase of, or follow-along services to persons with developmental disabilities in, appropriate community living arrangements, including, but not limited to, support service for consumers in homes they own or lease, foster family placements, health care facilities, and licensed community care facilities. In considering appropriate placement alternatives for children with developmental disabilities, approval by the child's parent or guardian shall be obtained before placement is made.

(B) Each person with developmental disabilities placed by the regional center in a community living arrangement shall have the rights specified in this division. These rights shall be brought to the person's attention by any means necessary to reasonably communicate these rights to each resident, provided that, at a minimum, the Director of Developmental Services prepare, provide, and require to be clearly posted in all residential facilities and day programs a poster using simplified language and pictures that is designed to be more understandable by persons with cognitive disabilities and that the rights information shall also be available through the regional center to each residential facility and day program in alternative formats, including, but not limited to, other languages, braille, and audio tapes, when necessary to meet the communication needs of consumers.

(C) Consumers are eligible to receive supplemental services including, but not limited to, additional staffing, pursuant to the process described in subdivision (d) of Section 4646. Necessary additional staffing that is not specifically included in the rates paid to the service provider may be purchased by the regional center if the additional staff are in excess of the amount required by regulation and the individual's planning team determines the additional services are consistent with the provisions of the individual program plan. Additional staff should be periodically reviewed by the planning team for consistency with the individual program plan objectives in order to determine if continued use of the additional

staff is necessary and appropriate and if the service is producing outcomes consistent with the individual program plan. Regional centers shall monitor programs to ensure that the additional staff is being provided and utilized appropriately.

(10) Emergency and crisis intervention services including, but not limited to, mental health services and behavior modification services, may be provided, as needed, to maintain persons with developmental disabilities in the living arrangement of their own choice. Crisis services shall first be provided without disrupting a person's living arrangement. If crisis intervention services are unsuccessful, emergency housing shall be available in the person's home community. If dislocation cannot be avoided, every effort shall be made to return the person to his or her living arrangement of choice, with all necessary supports, as soon as possible.

(11) Among other service and support options, planning teams shall consider the use of paid roommates or neighbors, personal assistance, technical and financial assistance, and all other service and support options which would result in greater self-sufficiency for the consumer and cost-effectiveness to the state.

(12) When facilitation as specified in an individual program plan requires the services of an individual, the facilitator shall be of the consumer's choosing.

(13) The community support may be provided to assist individuals with developmental disabilities to fully participate in community and civic life, including, but not limited to, programs, services, work opportunities, business, and activities available to persons without disabilities. This facilitation shall include, but not be limited to, any of the following:

(A) Outreach and education to programs and services within the community.

(B) Direct support to individuals which would enable them to more fully participate in their community.

(C) Developing unpaid natural supports when possible.

(14) Other services and supports may be provided as set forth in Sections 4685, 4686, 4687, 4688, and 4689, when necessary.

(b) (1) Advocacy for, and protection of, the civil, legal, and service rights of persons with developmental disabilities as established in this division.

(2) Whenever the advocacy efforts of a regional center to secure or protect the civil, legal, or service rights of any of its consumers prove ineffective, the regional center or the person with developmental disabilities or his or her parents, legal guardian, or other representative may request the area board to initiate action under the provisions defining area board advocacy functions established in this division.

(c) The regional center may assist consumers and families directly, or through a provider, in identifying and building circles of support within the community.

(d) In order to increase the quality of community services and protect consumers, the regional center shall, when appropriate, take either of the following actions:

(1) Identify services and supports that are ineffective or of poor quality and provide or secure consultation, training, or technical assistance services for any agency or individual provider to assist that agency or individual provider in upgrading the quality of services or supports.

(2) Identify providers of services or supports that may not be in compliance with local, state, and federal statutes and regulations and notify the appropriate licensing or regulatory authority, or request the area board to investigate the possible noncompliance.

(e) When necessary to expand the availability of needed services of good quality, a regional center may take actions that include, but are not limited to, the following:

(1) Soliciting an individual or agency by requests for proposals or other means, to provide needed services or supports not presently available.

(2) Requesting funds from the Program Development Fund, pursuant to Section 4677, or community placement plan funds designated from that fund, to reimburse the startup costs needed to initiate a new program of services and supports.

(3) Using creative and innovative service delivery models, including, but not limited to, natural supports.

(f) Except in emergency situations, a regional center shall not provide direct treatment and therapeutic services, but shall utilize appropriate public and private community agencies and service providers to obtain those services for its consumers.

(g) Where there are identified gaps in the system of services and supports or where there are identified consumers for whom no provider will provide services and supports contained in his or her individual program plan, the department may provide the services and supports directly.

SEC. 8. Section 4648.1 of the Welfare and Institutions Code is amended to read:

4648.1. (a) The State Department of Developmental Services and regional centers may monitor services and supports purchased for regional center consumers with or without prior notice. Not less than two monitoring visits to a licensed long-term health care or community care facility or family home agency home each year shall be unannounced. The department may conduct fiscal reviews and audits of the service providers' records.

(b) Department and regional center staff involved in monitoring or auditing services provided to the regional centers' consumers by a service provider shall have access to the provider's grounds, buildings, and service program, and to all related records, including books, papers, computerized data, accounting records, and related documentation. All persons connected with the service provider's

program, including, but not limited to, program administrators, staff, consultants, and accountants, shall provide information and access to facilities as required by the department or regional center.

(c) The department, in cooperation with regional centers, shall ensure that all providers of services and supports purchased by regional centers for their consumers are informed of all of the following:

(1) The provisions of this section.

(2) The responsibility of providers to comply with laws and regulations governing both their service program and the provision of services and supports to people with developmental disabilities.

(3) The responsibility of providers to comply with conditions of any contract or agreement between the regional center and the provider, and between the provider and the department.

(4) The rights of providers established in regulations adopted pursuant to Sections 4648.2, 4748, and 4780.5, to appeal actions taken by regional centers or the department as a result of their monitoring and auditing findings.

(d) A regional center may terminate payments for services, and may terminate its contract or authorization for the purchase of consumer services if it determines that the provider has not complied with provisions of its contract or authorization with the regional center or with applicable state laws and regulations. When terminating payments for services or its contract or authorization for the purchase of consumer services, a regional center shall make reasonable efforts to avoid unnecessary disruptions of consumer services.

(e) A regional center or the department may recover from the provider funds paid for services when the department or the regional center determines that either of the following has occurred:

(1) The services were not provided in accordance with the regional center's contract or authorization with the provider, or with applicable state laws or regulations.

(2) The rate paid is based on inaccurate data submitted by the provider on a provider cost statement.

Any funds so recovered shall be remitted to the department.

(f) Any evidence of suspected licensing violations found by department or regional center personnel shall be reported immediately to the appropriate state licensing agency.

(g) Regional centers may establish volunteer teams, made up of consumers, parents, other family members, and advocates to conduct the monitoring activities described in this section.

(h) In meeting its responsibility to provide technical assistance to providers of community living arrangements for persons with developmental disabilities, including, but not limited to, licensed residential facilities, family home agencies, and supported or independent living arrangements, a regional center shall utilize the

"Looking at Service Quality-Provider's Handbook" developed by the department or subsequent revisions developed by the department.

SEC. 9. The Legislature finds and declares all of the following:

(a) Residential services provided by licensed community care facilities serving persons with developmental disabilities are an essential element in California's system of community care.

(b) The Alternative Residential Model (ARM) currently used to reimburse services provided by these facilities has not been updated since 1988, and certain changes are required to encourage optimum consumer growth and development.

(c) ARM must be updated in order to do all of the following:

(1) Focus more on individual consumer services than on facility classification.

(2) Allow additional flexibility in the delivery and reimbursement of consumer services.

(3) Promote greater integration, independence, productivity, and satisfaction among consumers.

(4) Make changes to the model without creating major disruptions for affected facilities or consumers.

SEC. 10. Section 4681.1 of the Welfare and Institutions Code is amended to read:

4681.1. (a) The department shall adopt regulations that specify rates for community care facilities serving persons with developmental disabilities. The implementation of the regulations shall be contingent upon an appropriation in the annual Budget Act for this purpose. These rates shall be calculated on the basis of a cost model designed by the department which ensures that aggregate facility payments support the provision of services to each person in accordance with his or her individual program plan and applicable program requirements. The cost model shall reflect cost elements that shall include, but are not limited to, all of the following:

(1) "Basic living needs" include utilities, furnishings, food, supplies, incidental transportation, housekeeping, personal care items, and other items necessary to ensure a quality environment for persons with developmental disabilities. The amount identified for the basic living needs element of the rate shall be calculated as the average projected cost of these items in an economically and efficiently operated community care facility.

(2) "Direct care" includes salaries, wages, benefits, and other expenses necessary to supervise or support the person's functioning in the areas of self-care and daily living skills, physical coordination mobility, and behavioral self-control, choice making, and integration. The amount identified for direct care shall be calculated as the average projected cost of providing the level of service required to meet each person's functional needs in an economically and efficiently operated community care facility. The direct care portion of the rate shall reflect specific service levels defined by the

department on the basis of relative resident need and the individual program plan.

(3) "Special services" include specialized training, treatment, supervision, or other services which a person's individual program plan requires to be provided by the residential facility in addition to the direct care provided under paragraph (2). The amount identified for special services shall be calculated for each individual based on the additional services specified in the person's individual program plan and the prevailing rates paid for similar services in the area. The special services portion of the rate shall reflect a negotiated agreement between the facility and the regional center in accordance with Section 4648.

(4) "Indirect costs" include managerial personnel, facility operation, maintenance and repair, other nondirect care, employee benefits, contracts, training, travel, licenses, taxes, interest, insurance, depreciation, and general administrative expenses. The amount identified for indirect costs shall be calculated as the average projected cost for these expenses in an economically and efficiently operated community care facility.

(5) "Property costs" include mortgages, leases, rent, taxes, capital or leasehold improvements, depreciation, and other expenses related to the physical structure. The amount identified for property costs shall be based on the fair rental value of a model facility which is adequately designed, constructed, and maintained to meet the needs of persons with developmental disabilities. The amount identified for property costs shall be calculated as the average projected fair rental value of an economically and efficiently operated community care facility.

(b) The cost model shall take into account factors which include, but are not limited to, all of the following:

(1) Facility size, as defined by the department on the basis of the number of facility beds licensed by the State Department of Social Services and vendorized by the regional center.

(2) Specific geographic areas, as defined by the department on the basis of cost of living and other pertinent economic indicators.

(3) Common levels of direct care, as defined by the department on the basis of services specific to an identifiable group of persons as determined through the individual program plan.

(4) Positive outcomes, as defined by the department on the basis of increased integration, independence, and productivity at the aggregate facility and individual consumer level.

(5) Owner-operated and staff-operated reimbursement which shall, not differ for facilities that are required to comply with the same program requirements.

(c) The rates established for individual community care facilities serving persons with developmental disabilities shall reflect all of the model cost elements and rate development factors described in this section. The cost model design shall include a process for updating

the cost model elements that address variables, including, but not limited to, all of the following:

(1) Economic trends in California.

(2) New state or federal program requirements.

(3) Changes in the state or federal minimum wage.

(4) Increases in fees, taxes, or other business costs.

(5) Increases in federal supplemental security income/state supplementary program for the aged, blind, and disabled payments.

(d) Rates established for developmentally disabled persons who are also dually diagnosed with a mental disorder may be fixed at a higher rate. The department shall work with the State Department of Mental Health to establish criteria upon which higher rates may be fixed pursuant to this subdivision. The higher rate for developmentally disabled persons who are also dually diagnosed with a mental disorder may be paid when requested by the director of the regional center and approved by the Director of Developmental Services.

(e) By January 1, 2001, the department shall prepare proposed regulations to implement the changes outlined in this section. The department may use a private firm to assist in the development of these changes and shall confer with consumers, providers, and other interested parties concerning the proposed regulations. By May 15, 2001, and each year thereafter, the department shall provide the Legislature with annual community care facility rates, including any draft amendments to the regulations as required. By July 1, 2001, and each year thereafter, contingent upon an appropriation in the annual Budget Act for this purpose, the department shall adopt emergency regulations which establish the annual rates for community care facilities serving persons with developmental disabilities for each fiscal year.

(f) During the first year of operation under the revised rate model, individual facilities shall be held harmless for any reduction in aggregate facility payments caused solely by the change in reimbursement methodology.

SEC. 11. Section 4685 of the Welfare and Institutions Code is amended to read:

4685. (a) Consistent with state and federal law, the Legislature finds and declares that children with developmental disabilities most often have greater opportunities for educational and social growth when they live with their families. The Legislature further finds and declares that the cost of providing necessary services and supports which enable a child with developmental disabilities to live at home is typically equal to or lower than the cost of providing out-of-home placement. The Legislature places a high priority on providing opportunities for children with developmental disabilities to live with their families, when living at home is the preferred objective in the child's individual program plan.

(b) It is the intent of the Legislature that regional centers provide or secure family support services that do all of the following:

(1) Respect and support the decisionmaking authority of the family.

(2) Be flexible and creative in meeting the unique and individual needs of families as they evolve over time.

(3) Recognize and build on family strengths, natural supports, and existing community resources.

(4) Be designed to meet the cultural preferences, values, and lifestyles of families.

(5) Focus on the entire family and promote the inclusion of children with disabilities in all aspects of school and community.

(c) In order to provide opportunities for children to live with their families, the following procedures shall be adopted:

(1) The department and regional centers shall give a very high priority to the development and expansion of services and supports designed to assist families that are caring for their children at home, when that is the preferred objective in the individual program plan. This assistance may include, but is not limited to specialized medical and dental care, special training for parents, infant stimulation programs, respite for parents, homemaker services, camping, day care, short-term out-of-home care, child care, counseling, mental health services, behavior modification programs, special adaptive equipment such as wheelchairs, hospital beds, communication devices, and other necessary appliances and supplies, and advocacy to assist persons in securing income maintenance, educational services, and other benefits to which they are entitled.

(2) When children with developmental disabilities live with their families, the individual program plan shall include a family plan component which describes those services and supports necessary to successfully maintain the child at home. Regional centers shall consider every possible way to assist families in maintaining their children at home, when living at home will be in the best interest of the child, before considering out-of-home placement alternatives. When the regional center first becomes aware that a family may consider an out-of-home placement, or is in need of additional specialized services to assist in caring for the child in the home, the regional center shall meet with the family to discuss the situation and the family's current needs, solicit from the family what supports would be necessary to maintain the child in the home, and utilize creative and innovative ways of meeting the family's needs and providing adequate supports to keep the family together, if possible.

(3) To ensure that these services and supports are provided in the most cost-effective and beneficial manner, regional centers may utilize innovative service-delivery mechanisms, including, but not limited to, vouchers; alternative respite options such as foster families, vacant community facility beds, crisis child care facilities;

and alternative child care options such as supplemental support to generic child care facilities and parent child care cooperatives.

(4) If the parent of any child receiving services and supports from a regional center believes that the regional center is not offering adequate assistance to enable the family to keep the child at home, the parent may initiate a request for fair hearing as established in this division. A family shall not be required to start a placement process or to commit to placing a child in order to receive requested services.

(5) Nothing in this section shall be construed to encourage the continued residency of adult children in the home of their parents when that residency is not in the best interests of the person.

(6) When purchasing or providing a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

(7) A regional center may purchase or provide a voucher for diapers for children three years of age or older. A regional center may purchase or provide vouchers for diapers under three years of age when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.

SEC. 12. Section 4685.1 is added to the Welfare and Institutions Code, to read:

4685.1. (a) When a minor child requires a living arrangement outside of the family home, as determined in the individual program plan developed pursuant to Section 4646 and Section 4648, the regional center shall make every effort to secure a living arrangement, consistent with the individual program plan, in reasonably close proximity to the family home.

(b) When the parents or guardian of a minor child requests that an out-of-home living arrangement for a minor child be in close proximity to the family home, and when such a living arrangement cannot be secured by the regional center, the regional center shall include with the individual program plan a written statement of its efforts to locate, develop, or adapt appropriate services and supports in a living arrangement within close proximity to the family home and what steps will be taken by the regional center to develop the services and supports necessary to return the child to the family home or within close proximity of the family home. This statement shall be updated every six months, or as agreed to by the parents or guardians, and a copy shall be forwarded to the parents or guardians of the minor and to the director of the department.

(c) This section shall not be construed to impede the movement of consumers to other geographic areas or the preference of the parent or guardian for the placement of their minor child.

SEC. 13. Section 4685.5 is added to the Welfare and Institutions Code, to read:

4685.5. (a) Notwithstanding any other provision of law, commencing January 1, 1999, the department shall conduct a three-year pilot project under which funds shall be allocated for local self-determination pilot programs that will enhance the ability of a consumer and his or her family to control the decisions and resources required to meet all or some of the objectives in his or her individual program plan.

(b) Local self-determination pilot programs funded pursuant to this section may include, but not be limited to, all of the following:

(1) Programs that provide for consumer and family control over which services best meet their needs and the objectives in the individual program plan.

(2) Programs that provide allowances or subsidies to consumers and their families.

(3) Programs providing for the use of debit cards.

(4) Programs that provide for the utilization of parent vendors, direct pay options, individual budgets for the procurement of services and supports, alternative case management, and vouchers.

(5) Wraparound programs.

(c) The department shall allocate funds for pilot programs in three regional center catchment areas and shall, to the extent possible, test a variety of mechanisms outlined in subdivision (b).

(d) Funds allocated to implement this section may be used for administrative and evaluation costs. Purchase-of-services costs shall be based on the estimated annual service costs associated with each participating consumer and family. Each proposal shall include a budget outlining administrative, service, and evaluation components.

(e) Pilot projects shall be conducted in the following regional center catchment areas:

(1) Tri-Counties Regional Center.

(2) Eastern Los Angeles Regional Center.

(3) Redwood Coast Regional Center.

(f) If any of the regional centers specified in subdivision (e) do not submit a proposal meeting the requirements set forth in this section or by the department, the department may select another regional center to conduct a pilot project.

(g) The department shall develop and issue a request for proposals soliciting regional center participation in the pilot program. Consumers, families, regional centers, advocates, and service providers shall be consulted during the development of the request for proposal and selection of the pilot areas.

(h) Each area receiving funding under this section shall demonstrate joint regional center and area board support for the local self-determination pilot program, and shall establish a local advisory committee, appointed jointly by the regional center and

area board, made up of consumers, family members, advocates, and community leaders and that shall reflect the multicultural diversity and geographic profile of the catchment area. The local advisory committee shall review the development and ongoing progress of the local self-determination pilot program and may make ongoing recommendations for improvement to the regional center. By September 1, 2000, the local advisory committee shall submit to the department recommendations for the continuation and expansion of the program.

(i) The department shall issue a report to the Legislature no later than January 1, 2001, on the status of each pilot program funded by this section and recommendations with respect to continuation and expansion.

(j) Notwithstanding any other provision of law, as of January 1, 1999, of the balances available pursuant to Item 4300-490 of the Budget Act of 1998 for regional centers, the first seven hundred fifty thousand dollars ($750,000) is reappropriated for the purposes of implementing this section, and shall be available for expenditure until January 1, 2002.

(k) This section shall remain in effect only until January 1, 2002, and as of that date is repealed, unless a later enacted statute, that becomes effective on or before January 1, 2002, extends or deletes that date.

SEC. 14. Section 4689 of the Welfare and Institutions Code is amended to read:

4689. Consistent with state and federal law, the Legislature places a high priority on providing opportunities for adults with developmental disabilities, regardless of the degree of disability, to live in homes that they own or lease with support available as often and for as long as it is needed, when that is the preferred objective in the individual program plan. In order to provide opportunities for adults to live in their own homes, the following procedures shall be adopted:

(a) The department and regional centers shall ensure that supported living arrangements adhere to the following principles:

(1) Consumers shall be supported in living arrangements which are typical of those in which persons without disabilities reside.

(2) The services or supports that a consumer receives shall change as his or her needs change without the consumer having to move elsewhere.

(3) The consumer's preference shall guide decisions concerning where and with whom he or she lives.

(4) Consumers shall have control over the environment within their own home.

(5) The purpose of furnishing services and supports to a consumer shall be to assist that individual to exercise choice in his or her life while building critical and durable relationships with other individuals.

(6) The services or supports shall be flexible and tailored to a consumer's needs and preferences.

(7) Services and supports are most effective when furnished where a person lives and within the context of his or her day-to-day activities.

(8) Consumers shall not be excluded from supported living arrangements based solely on the nature and severity of their disabilities.

(b) Regional centers may contract with agencies or individuals to assist consumers in securing their own homes and to provide consumers with the supports needed to live in their own homes.

(c) The range of supported living services and supports available include, but are not limited to, assessment of consumer needs; assistance in finding, modifying and maintaining a home; facilitating circles of support to encourage the development of unpaid and natural supports in the community; advocacy and self-advocacy facilitation; development of employment goals; social, behavioral, and daily living skills training and support; development and provision of 24-hour emergency response systems; securing and maintaining adaptive equipment and supplies; recruiting, training, and hiring individuals to provide personal care and other assistance, including in-home supportive services workers, paid neighbors, and paid roommates; providing respite and emergency relief for personal care attendants; and facilitating community participation. Assessment of consumer needs may begin before 18 years of age to enable the consumer to move to his or her own home when he or she reaches 18 years of age.

(d) Regional centers shall provide information and education to consumers and their families about supported living principles and services.

(e) Regional centers shall monitor and ensure the quality of services and supports provided to individuals living in homes that they own or lease. Monitoring shall take into account all of the following:

(1) Adherence to the principles set forth in this section.

(2) Whether the services and supports outlined in the consumer's individual program plan are congruent with the choices and needs of the individual.

(3) Whether services and supports described in the consumer's individual program plan are being delivered.

(4) Whether services and supports are having the desired effects.

(5) Whether the consumer is satisfied with the services and supports.

SEC. 15. Section 4689.7 is added to the Welfare and Institutions Code, to read:

4689.7. (a) For the 1998–99 fiscal year, levels of payment for supported living service providers that are vendored pursuant to Section 4689 shall be increased based on the amount appropriated in

this section for the purpose of increasing the salary, wage, and benefits for direct care workers providing supported living services.

(b) The sum of five million fifty-seven thousand dollars ($5,057,000) is hereby appropriated in augmentation of the appropriations made in the Budget Act of 1998 to implement this section as follows:

(1) The sum of two million four hundred five thousand dollars ($2,405,000) is hereby appropriated from the General Fund to the State Department of Health Services in augmentation of the appropriation made in Item 4260-101-0001.

(2) The sum of two million five hundred fifty-one thousand dollars ($2,551,000) is hereby appropriated from the Federal Trust Fund to the State Department of Health Services in augmentation of the appropriation made in Item 4260-101-0890.

(3) The sum of one hundred one thousand dollars ($101,000) is hereby appropriated from the General Fund to the Department of Developmental Services in augmentation of the appropriation made in Item 4300-101-0001, scheduled as follows:

10.10—Regional Centers	
(b) 10.10.020 Purchase of Services	$5,057,000
(e) Reimbursements	−$4,956,000

(c) By January 1, 2000, in consultation with stakeholder organizations, the department shall establish by regulation, an equitable and cost-effective methodology for the determination of supported living costs and a methodology of payment for providers of supported living services. The methodology shall consider the special needs of persons with developmental disabilities and the quality of services to be provided.

(d) Following the allocation of funding appropriated in this section, and until these regulations are implemented, no new funds shall be allocated by the department for the purpose of increasing the level of payment for supported living service providers.

SEC. 16. Section 4696.1 of the Welfare and Institutions Code is repealed.

SEC. 17. Section 4696.1 is added to the Welfare and Institutions Code, to read:

4696.1. (a) The Legislature finds and declares that improved cooperative efforts between regional centers and county mental health agencies are necessary in order to achieve each of the following:

(1) Increased leadership, communication, and organizational effectiveness between regional centers and county mental health agencies.

(2) Decreased costs and minimized fiscal risk in serving persons who are dually diagnosed with mental illness and developmental disabilities.

(3) Continuity of services.

(4) Improved quality of mental health outcomes for persons who are dually diagnosed.

(5) Optimized utilization of agency resources by building on the strengths of each organization.

(6) Timely resolution of conflicts.

(b) In order to achieve the outcomes specified in subdivision (a), by July 1, 1999, each regional center and county mental health agency shall develop a memorandum of understanding to do all of the following:

(1) Identify staff who will be responsible for all of the following:

(A) Coordinate service activity between the two agencies.

(B) Identify dually diagnosed consumers of mutual concern.

(C) Conduct problem resolution for those consumers serviced by both systems.

(2) Develop a general plan for crisis intervention for persons served by both systems. The plan shall include after-hours emergency response systems, interagency notification guidelines, and followup protocols.

(3) Develop a procedure by which each dually diagnosed consumer shall be the subject of a case conference conducted jointly by both regional center staff and county mental health as soon as possible after admission into a county operated or contracted acute, inpatient mental health facility. The case conference shall confirm the diagnosis and the treatment plan.

(4) Develop a procedure by which planning for dually diagnosed consumers admitted to a mental health inpatient facility shall be conducted collaboratively by both the regional center and the local mental health agency and shall commence as soon as possible or as deemed appropriate by the treatment staff. The discharge plan shall include subsequent treatment needs and the agency responsible for those services.

(5) Develop a procedure by which regional center staff and county mental health staff shall collaborate to plan and provide training to community service providers, including day programs, residential facilities, and intermediate care facilities, regarding effective services to persons who are dually diagnosed. This training shall include crisis prevention with a focus on proactively recognizing crisis and intervening effectively with consumers who are dually diagnosed.

(6) Develop a procedure by which the regional center and the county mental health agency shall work toward agreement on a consumer-by-consumer basis on the presenting diagnosis and medical necessity, as defined by regulations of the State Department of Mental Health.

(c) The department and the State Department of Mental Health shall collaborate to provide a statewide perspective and technical assistance to local service regions when local problem resolution mechanisms have been exhausted and state level participation has been requested by both local agencies.

(d) The director of the local regional center and the director of the county mental health agency or their designees shall meet as needed but no less than annually to do all of the following:

(1) Review the effectiveness of the interagency collaboration.

(2) Address any outstanding policy issues between the two agencies.

(3) Establish the direction and priorities for ongoing collaboration efforts between the two agencies.

(e) Copies of each memorandum of understanding shall be forwarded to the State Department of Developmental Services upon completion or whenever amended. The department shall make copies of the memorandum of understanding available to the public upon request.

(f) By May 15 of each year, the department shall provide all of the following information to the Legislature:

(1) The status of the memorandums of understanding developed jointly by each regional center and the county mental health agency and identify any barriers to meeting the outcomes specified in this section.

(2) The availability of mobile crisis intervention services, including generic services, by regional center catchment area, including the names of vendors and rates paid.

(3) A description of each regional center's funded emergency housing options, including the names and types of vendors, the number of beds and rates, including, but not limited to, crisis emergency group homes, crisis beds in a regular group home, crisis foster homes, motel or hotel or psychiatric facility beds, and whether each emergency housing option serves minors or adults and whether it is physically accessible.

SEC. 18. Section 4697 is added to the Welfare and Institutions Code, to read:

4697. (a) The Legislature finds and declares all of the following:

(1) The methods of establishing rates of payment for providers of services and supports to persons with developmental disabilities in the community should reflect the actual costs of ensuring high quality and stable services.

(2) State law and regulations should reflect the type and design of community-based services and supports necessary to best meet the needs and choices of individuals with developmental disabilities and their families.

(3) The licensing, vendoring, and monitoring of service and support providers is necessary to ensure the safety and satisfaction of consumers and should be achieved in a manner that is respectful of

consumer privacy and choices, responsive to consumers and families, minimizes complexity and duplication, fosters partnership between state agencies and regional centers and provider in the delivery of high-quality services and supports, and respond swiftly to protect the rights and health of consumers.

(4) System stakeholders must work collaboratively and continuously to ensure that the design, funding methodology, and monitoring of the service and support delivery system reflects the values and goals of those served.

(b) It is the intent of the Legislature that the State Department of Developmental Services facilitate joint meetings between system stakeholders, as appropriate, to review the service delivery system and make recommendations for change when desirable. The efforts may include, but are not limited to:

(1) The process by which regional centers vendor providers of services and supports and make recommendations for changes to improve the quality of services and supports and choices of consumers and families in selecting providers.

(2) Ratesetting methodologies and recommendations to maximize cost-effectiveness while emphasizing quality, variety, and flexibility in the delivery of services and supports.

(3) The various monitoring and oversight functions of state and local agencies and recommendations for improving effectiveness and minimizing duplication.

SEC. 19. Section 4712 of the Welfare and Institutions Code, as amended by Section 61 of Chapter 310 of the Statutes of 1998, 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 adopted 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. Training shall include, but not be limited to, the Lanterman Developmental Disabilities Services Act and regulations adopted thereunder, relevant case law, information about services and supports available to persons with developmental disabilities, including innovative services and supports, the standard agreement contract between the department and regional centers and regional center purchase-of-service policies, and information and training on protecting the rights of consumers at administrative hearings, with emphasis on assisting, where appropriate, those consumers represented by themselves or an advocate inexperienced in administrative hearings in fully developing the administrative record. The State Department of Developmental Services shall seek the advice of the State Council on Developmental Disabilities, the Organization of Area Boards, the protection and advocacy agency designated by the Governor in this state to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, the Association of Regional Center Agencies, and other state agencies or organizations and consumers and family members as designated by the department in the development of standardized hearing procedures for hearing officers and training materials and the implementation of training procedures by the department. The department shall provide formal training for hearing officers on at least an annual basis. The training shall be developed and presented by the department, however, the department shall invite those agencies and organizations listed in this subdivision to participate.

(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. The claimant or the authorized representative of the claimant and the regional center shall agree on the location of the fair hearing.

(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.

(m) The agency awarded the contract for independent hearing officers shall annually conduct, or cause to be conducted, an evaluation of the hearing officers who conduct hearings under this part. The department shall approve the methodology used to conduct the annual evaluation. The agency awarded the contract shall annually submit to the department copies of administrative decisions reviewed by the superior court and a summary analysis of the rationale as to why the superior court affirmed or denied the decisions. Information and data for this evaluation shall be solicited

from consumers who were claimants in an administrative hearing over the past year, their family members or authorized representative if involved in the hearing, regional centers, and nonattorney advocates, attorneys who represented either party in an administrative hearing over the past year, and the organizations identified in subdivision (b). The areas of evaluation shall include, but not be limited to, the hearing officers' demeanor toward parties and witnesses, conduct of the hearing in accord with fairness and standards of due process, ability to fairly develop the record in cases where consumers represent themselves or are represented by an advocate that does not have significant experience in administrative hearings, use of legal authority, clarity of written decisions, and adherence to the requirements of subdivision (b) of Section 4712.5. The department shall be provided with a copy of the evaluation and shall use the evaluation in partial fulfillment of its evaluation of the contract for the provision of independent hearing officers. A summary of the data collected and the summary analysis of superior court decisions shall be made available to the public upon request, provided that the names of individual hearing officers and consumers shall not be disclosed.

SEC. 20. Section 4712 of the Welfare and Institutions Code, as amended by Section 61 of Chapter 310 of the Statutes of 1998, 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 adopted 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. Training shall include, but not be limited to, the Lanterman Developmental Disabilities Services Act and regulations adopted thereunder, relevant case law, information about services and supports available to persons with developmental disabilities, including innovative services and supports, the standard agreement contract between the department and regional centers and regional center purchase-of-service policies, and information and training on protecting the rights of consumers at administrative hearings, with emphasis on assisting, where appropriate, those consumers represented by themselves or an advocate inexperienced in administrative hearings in fully developing the administrative record. The State Department of Developmental Services shall seek the advice of the State Council on Developmental Disabilities, the Organization of Area Boards, the protection and advocacy agency designated by the Governor in this state to fulfill the requirements and assurances of the federal Developmental Disabilities Assistance and Bill of Rights Act, contained in Chapter 75 (commencing with Section 6000) of Title 42 of the United States Code, the Association of Regional Center Agencies, and other state agencies or organizations and consumers and family members as designated by the department in the development of standardized hearing procedures for hearing officers and training materials and the implementation of training procedures by the department. The department shall provide formal training for hearing officers on at least an annual basis. The training shall be developed and presented by the department, however, the department shall invite those agencies and organizations listed in this subdivision to participate.

(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) The claimant and the service agency shall exchange a list of potential witnesses, the general subject of the testimony of each witness, and copies of all potential documentary evidence at least five days prior to the hearing. The hearing officer may prohibit testimony of a witness that is not disclosed and may prohibit the introduction

of documents that have not been disclosed. However, the hearing officer may allow introduction of such testimony or witness in the interest of justice.

(e) The fair hearing shall be held at a time and place reasonably convenient to the claimant and the authorized representative. The claimant or the authorized representative of the claimant and the regional center shall agree on the location of the fair hearing.

(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. Both parties shall be allowed to submit documents into evidence at the beginning of the hearing. No party shall be required to formally authenticate any document unless the hearing officer determines the necessity to do so in the interest of justice. All testimony shall be under oath or affirmation which the hearing officer is empowered to administer.

(j) A service agency shall present its witnesses and all other evidence before the claimant presents his or her case unless the parties agree otherwise or the hearing officer determines that there exists good cause for a witness to be heard out of order. This section does not alter the burden of proof.

(k) A recording shall be made of the proceedings before the hearing officer. Any cost of recording shall be borne by the responsible state agency.

(*l*) 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.

(m) 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.

(n) The agency awarded the contract for independent hearing officers shall annually conduct, or cause to be conducted, an evaluation of the hearing officers who conduct hearings under this part. The department shall approve the methodology used to conduct the annual evaluation. The agency awarded the contract

shall annually submit to the department copies of administrative decisions reviewed by the superior court and a summary analysis of the rationale as to why the superior court affirmed or denied the decisions. Information and data for this evaluation shall be solicited from consumers who were claimants in an administrative hearing over the past year, their family members or authorized representative if involved in the hearing, regional centers, and nonattorney advocates, attorneys who represented either party in an administrative hearing over the past year, and the organizations identified in subdivision (b). The areas of evaluation shall include, but not be limited to, the hearing officers' demeanor toward parties and witnesses, conduct of the hearing in accord with fairness and standards of due process, ability to fairly develop the record in cases where consumers represent themselves or are represented by an advocate that does not have significant experience in administrative hearings, use of legal authority, clarity of written decisions, and adherence to the requirements of subdivision (b) of Section 4712.5. The department shall be provided with a copy of the evaluation and shall use the evaluation in partial fulfillment of its evaluation of the contract for the provision of independent hearing officers. A summary of the data collected and the summary analysis of superior court decisions shall be made available to the public upon request, provided that the names of individual hearing officers and consumers shall not be disclosed.

SEC. 21. 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.

(d) The department shall collect and maintain, or cause to be collected and maintained, redacted copies of all administrative hearing decisions issued under this division. Hearing decisions shall be categorized by the type of service or support that was the subject of the hearing and by the year of issuance. The department shall make copies of the decisions available to the public upon request at a cost per page not greater than that which it charges for document requests submitted pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code. The department shall use this information in partial fulfillment of its obligation to monitor regional centers and in its evaluation of the contract for the provision of independent hearing officers.

SEC. 22. Section 4731 of the Welfare and Institutions Code is amended to read:

4731. (a) Each consumer or any representative acting on behalf of any consumer or consumers, who believe that any right to which a consumer is entitled has been abused, punitively withheld, or improperly or unreasonably denied by a regional center, developmental center, or service provider, may pursue a complaint as provided in this section.

(b) Initial referral of any complaint taken pursuant to this section shall be to the clients' rights advocate assigned to the regional center from which the consumer receives case management services. If the consumer resides in a state developmental center, the complaint shall be made to the clients' rights advocate assigned to that state developmental center. The clients' rights advocate shall, within 10 working days of receiving a complaint, investigate the complaint and send a written proposed resolution to the complainant and to the regional center, developmental center, or service provider.

(c) If the complainant expresses dissatisfaction with the action taken or proposed by the clients' rights advocate, the complainant shall be referred, by the clients' rights advocate, within five working days, to the director of the state developmental center or of the regional center.

(d) If the complaint is not resolved to the satisfaction of the complainant within ten working days of receipt by the director of the state developmental center or regional center, it shall be referred by that director to the State Department of Developmental Services. The director shall, within 45 days of receiving a complaint, issue a written administrative decision and send a copy of the decision to the complainant.

(e) The department shall annually compile the number of complaints filed, by each regional center catchment area, the subject matter of each complaint, and a summary of each decision. Copies shall be made available to any person upon request.

(f) This section shall not be used to resolve disputes concerning the nature, scope, or amount of services and supports that should be included in an individual program plan, for which there is an appeal procedure established in this division, or disputes regarding rates or audit appeals for which there is an appeal procedure established in regulations. Those disputes shall be resolved through the appeals procedure established by this division or in regulations.

(g) All consumers or, where appropriate, their parents, legal guardian, conservator, or authorized representative, shall be notified in writing in a language which they comprehend, of the right to file a complaint pursuant to this section when they apply for services from a regional center or are admitted to a developmental center, and at each regularly scheduled planning meeting.

SEC. 23. Section 4740 of the Welfare and Institutions Code is amended to read:

4740. The Legislature finds the following:

(a) The quality of care provided to persons with developmental disabilities by residential facilities is contingent upon a closely coordinated "team" effort by the regional center or its designee, the person with developmental disabilities, the parent or representative if appropriate, the residential facility administrator, and the licensing agency. The rights and responsibilities of each must be identified in order to assure clear direction and accountability for each.

(b) The quality of care is impaired when inordinate numbers of staff from placement and licensing agencies give direction to the facility administrator regarding care and service requirements.

SEC. 24. Section 4741 of the Welfare and Institutions Code is amended to read:

4741. An adult person with a developmental disability has the legal right to determine where his or her residence will be. Except in a situation which presents immediate danger to the health and well-being of the individual, the regional center or its designee shall not remove a consumer from a residential care facility against the client's wishes unless there has been specific court action to abridge such right with respect to an adult or unless the parent, guardian or conservator consents with respect to a child.

SEC. 25. Section 4742 of the Welfare and Institutions Code is amended to read:

4742. The regional center or its designated representative shall (a) guide and counsel facility staff regarding the care and services and supports required by each consumer served by the regional center; and (b) monitor the care and services and supports provided the individual to ensure that care and services and supports are provided in accordance with the individual program plan.

SEC. 26. Section 4742.1 is added to the Welfare and Institutions Code, to read:

4742.1. (a) A statement made by a regional center representative when discharging his or her obligation to monitor the provision of services and supports pursuant to this division shall be a privileged communication, subject to subdivision (b).

(b) A statement shall not be privileged pursuant to subdivision (a) if a party to a judicial action demonstrates that the regional center representative made the disputed statement with knowledge of its falsity or with reckless disregard for the truth.

SEC. 27. Section 4743 of the Welfare and Institutions Code is amended to read:

4743. It is the intent of the Legislature that to the greatest extent possible, the staff of the regional center or its designee are assigned so as to minimize the number of persons responsible for programs provided in a given facility.

The regional center or its designee shall designate the staff person responsible for assuring that each individual consumer's program plan is carried out. One person shall be assigned by the regional center as the principal liaison to a facility and to monitor the provision of care and the services provided by that facility in accordance with the individual program plans. If, due to the number of regional center consumers in the facility, additional staff of a regional center or its designee serve consumers in the facility, one person shall be assigned as having primary responsibility for, and assure consistency and continuity of, directions to the administrator and for the monitoring of care and services.

SEC. 28. Section 4744 of the Welfare and Institutions Code is amended to read:

4744. The regional center or its designee shall provide to the residential facility administrator all information in its possession concerning any history of dangerous propensity of the consumer prior to the placement in that facility. However, no confidential consumer information shall be released pursuant to this section without the consent of the consumer or authorized representative.

SEC. 29. Section 4745 of the Welfare and Institutions Code is amended to read:

4745. During each visit to the facility, the designated staff person shall inform the administrator orally of any substantial inadequacies in the care and services provided, the specific corrective action necessary and the date by which corrective action must be completed. The designated staff person shall confirm this information in writing to the administrator within 48 hours after the oral notice and inform the administrator in writing of the right to appeal the findings.

SEC. 30. Section 4747 of the Welfare and Institutions Code is amended to read:

4747. If a consumer or, when appropriate, the parent, guardian, or conservator or authorized representative, including those appointed pursuant to Section 4590 or subdivision (e) of Section 4705, requests a relocation, the regional center shall schedule an individual program plan meeting, as soon as possible to assist in locating and moving to another residence.

SEC. 31. Section 4847 is added to the Welfare and Institutions Code, to read:

4847. The State Department of Developmental Services shall coordinate, or require each regional center to coordinate, a meeting within each regional center catchment area between the regional center, the local health facility providers, the State Department of Health Services representatives from the local district office, and the State Department of Developmental Services center staff. The meeting shall be held at least annually to better coordinate services and supports provided to regional center consumers in licensed health facilities.

SEC. 32. (a) The Legislature finds that the current process by which regional centers vendorize community-based service providers is unnecessarily burdensome for both the regional center and for providers; that it has not had the effect of increasing the range of services and supports necessary to afford consumers and families a meaningful choice in service provider; that it has resulted in an overabundance of some types of services and supports and a scarcity of other types of services and supports; and that it has not enhanced the quality of existing services and supports.

(b) It is the intent of the Legislature that the vendorization process currently defined in statute and regulation be revised to allow regional centers, in partnership with their communities, greater flexibility in vendorizing service and support providers who meet local needs and offer services and supports of high quality.

(c) It is also the intent of the Legislature that the vendorization process ensure that consumers and families have a meaningful choice in the selection of service and support providers and that an independent appeal process be established for providers who wish to challenge a decision of the regional center regarding their vendor status.

SEC. 33. Section 20 of this bill incorporates amendments to Section 4712 of the Welfare and Institutions Code proposed by both this bill and AB 2494. 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 4712 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2494, in which case Section 19 of this bill shall not become operative.

SEC. 34. 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 1044

An act to add Title 7.96 (commencing with Section 67960) to the Government Code, relating to transportation.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Title 7.96 (commencing with Section 67960) is added to the Government Code, to read:

TITLE 7.96. NORTH LAKE TAHOE TRANSPORTATION AUTHORITY

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

67960. This title shall be known and may be cited as the North Lake Tahoe Transportation Authority Act.

67962. Unless the context otherwise requires, the following terms have the following meanings:

(a) "Association" means the North Tahoe Resort Association.

(b) "Authority" means the North Lake Tahoe Transportation Authority created under this title.

(c) "Board" means the board of directors of the authority.

(d) "Management association" means the Truckee-North Lake Tahoe Transportation Management Association.

CHAPTER 2. CREATION OF THE AUTHORITY

67964. The North Lake Tahoe Transportation Authority may be created upon approval of a resolution calling for the creation of the authority by a majority vote of the membership of the board of supervisors of each county that has territory within the authority.

67966. The boundaries of the authority begin at the southwest corner of Section 30, T14N, R16E, M.D.B.& M., being a point on the Placer-El Dorado County line, and run thence north along section

lines to the northwest corner of Section 6, T15N, R16E, M.D.B.& M., being a point on the south line of Section 36, T16N, R15E; thence east along the south line of Section 36, T16N, R15E, to the southeast corner thereof; thence north along section lines to the quarter-section corner on the east line of Section 25, T16N, R15E; thence westerly along the east-west centerlines (the half section lines) of Sections 25, 26, and 27, T16N, R15E, $2^3/_4$ miles more or less to an intersection with a branch of the North Fork of the American River located in Section 27, T16N, R15E; thence northwesterly and westerly along that branch of the river, $9^1/_2$ miles more or less to the north-south centerline of Section 20, T16N, R14E, M.D.B.&M.; thence north along the north-south centerline of Sections 20, 17, 8, and 5, T16N, R14E, and along the north-south centerline of Sections 32 and 29, T17N, R14E, M.D.B.& M., to the north line of Placer County, thence easterly along the north line of Placer County to the northeast corner of that county, a point on the east line of the State of California; thence south along the east line of the State of California; and the east line of Placer County to the southeast corner of that county; thence west and south along the south line of Placer County to the point of beginning.

67968. (a) The authority shall have a board of directors consisting of five persons elected to staggered four-year terms by a majority of the electors residing within the boundaries of the authority and voting in the election.

(b) The initial terms of office shall be established by the board of supervisors at the time of the call of the election.

(c) The Tahoe Transportation District may appoint one person to serve as a sixth, ex officio member of the board in a nonvoting capacity.

CHAPTER 3. POWERS AND FUNCTIONS OF THE AUTHORITY

67969. (a) (1) Before the date on which the voters approve the tax ordinance proposed under Section 67970, the association shall function as an advisor to the authority and shall be provided full opportunity to participate in the activities and decisions of the authority.

(2) On and after the date on which the voters approve the tax ordinance proposed under Section 67970, the management association shall function as an advisor to the authority and shall be provided full opportunity to participate in the activities and decisions of the authority.

(b) The authority, the association, and the management association shall confer to establish written procedures and policies governing the participation of the association and the management association.

67970. (a) A retail transactions and use tax ordinance applicable within the boundaries of the authority may be imposed by the authority in accordance with this chapter and Part 1.6 (commencing

with Section 7251) of Division 2 of the Revenue and Taxation Code, if all of the following occur:

(1) The tax ordinance is adopted by a majority vote of the board.

(2) Imposition of the tax is approved by a two-thirds vote of the voters voting on the measure at a special election called for that purpose by the board.

(3) A transportation expenditure plan is adopted by the authority pursuant to Section 67978.

(b) The retail transactions and use tax shall remain in effect for not longer than 20 years, or any lesser period of time specified in the tax ordinance. The tax may be continued in effect, or reimposed, by a tax ordinance adopted by a majority vote of the authority, if the reimposition of the tax is approved by a two-thirds vote of the voters.

67972. (a) In the ordinance, the authority shall do all of the following:

(1) State the nature of the tax to be imposed.

(2) Provide the tax rate or the maximum tax rate.

(3) Specify the period during which the tax will be imposed.

(4) Specify the purposes for which the revenue derived from the tax will be used.

(b) The tax rate may be in .25 percent increments and may not exceed a maximum tax rate of .50 percent.

67974. (a) The special election shall be called and conducted in the same manner as provided by law for the conduct of special elections by a county.

(b) The sample ballot to be mailed to the voters, pursuant to Section 13303 of the Elections Code, shall be the full proposition, as set forth in the ordinance calling the election. The voter information handbook shall include the entire transportation expenditure plan adopted under Section 67978.

67976. (a) Any transactions and use tax ordinance adopted pursuant to this chapter shall be operative on the first day of the first calendar quarter commencing more than 120 days after adoption of the ordinance.

(b) Prior to the operative date of the ordinance, the authority shall contract with the State Board of Equalization to perform all functions incidental to the administration and operation of the ordinance.

67978. (a) Prior to calling the election required under Section 67970, the authority shall adopt a transportation expenditure plan consisting of the North Lake Tahoe Long Range Transit Implementation Study, dated September 30, 1997, and other transit plans for serving local residents that were in effect on January 1, 1998. The plan shall give due consideration to the needs of both local residents of, and visitors to, the North Lake Tahoe region, and shall provide for the coordination, operation, and expansion of transit services that are beneficial to the local economy, attractive to visitors, and convenient to residents.

(b) (1) The authority shall annually review and may propose amendments to the transportation expenditure plan to provide for the use of available federal, state, and local transportation funds, to account for unexpected revenues, or to take into consideration unforeseen circumstances.

(2) Any amendments proposed under paragraph (1) shall be developed in cooperation with the Tahoe Transportation District and the Tahoe Regional Planning Agency and shall be for the purpose of implementing transportation programs and not for transportation planning, except where that planning is necessary to the creation of a joint powers or other similar agreement with governmental agencies located outside the boundaries of the authority.

(3) The authority shall refer all amendments proposed under paragraph (1) to the association, the management association, and any other organization interested in transit issues in the North Lake Tahoe region for comment and recommendations, prior to adoption of those amendments and not less than 45 days prior to the effective date of the amendments.

67980. Expenditure of the revenues derived from the tax imposed pursuant to this chapter, together with other federal, state, and local funds made available to the authority for transportation improvements, shall be in accordance with the transportation expenditure plan.

CHAPTER 1045

An act to add and repeal Chapter 12 (commencing with Section 11020) of Part 7 of the Education Code, relating to government.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. (a) For a county that received a loan pursuant to Article 1.5 (commencing with Section 55620) of Chapter 4 of Part 2 of Division 2 of Title 2 of the Government Code, the amount of the local match required pursuant to subdivision (b) of Section 4 of Chapter 339 of the Statutes of 1998 that is paid by the county during its initial year of participation in the program specified in that subdivision in either the 1998–99 fiscal year or the 1999–2000 fiscal year, shall be deemed a payment on the loan provided pursuant to that article.

(b) The principal balance of the loan made pursuant to that Article 1.5, following the application of any payments made by a county and the application of the payment deemed to have been made pursuant to subdivision (a), shall be paid by a county in annual

installments of no less than 10 percent of the principal balance of the loan. These payments shall be made by December 31 of each year commencing in the fiscal year following the initial participation in the program authorized by Section 4 of Chapter 339 of the Statutes of 1998. No further interest shall accrue on the loan after the operative date of this act and any interest accrued to date is hereby waived.

(c) This act shall become operative only if the county participates during the 1998–99 fiscal year or the 1999–2000 fiscal year in the program or programs implemented pursuant to Sections 2 to 4, inclusive, of Chapter 339 of the Statutes of 1998.

SEC. 2. Chapter 12 (commencing with Section 11020) is added to Part 7 of the Education Code, to read:

CHAPTER 12. ACADEMIC IMPROVEMENT AND ACHIEVEMENT ACT

11020. (a) Local educational agencies may submit proposals to the Superintendent of Public Instruction to fund activities that will increase the percentage of pupils at qualifying high schools that meet the requirements for admission to the California State University or the University of California. The Superintendent of Public Instruction shall recommend, and the State Board of Education shall adopt, criteria and regulations for the implementation of this chapter. Grants awarded pursuant to this chapter shall be used by the schoolsite to provide academic assistance and services to pupils necessary to inform pupils about the benefits of, and requirements for, higher education and to prepare pupils for college entrance. Funds awarded pursuant to this chapter shall not be used as a local match for any other state funded outreach, academic achievement, or college preparation program. These activities shall be designed to accomplish that which is set forth in paragraphs (1) to (3), inclusive, and either paragraph (4) or (5) of the following:

(1) Significant improvement on scores on nationally normed, standardized tests used for college admission decisions.

(2) Significant increases in the number and percentage of pupils who enroll in and complete the A-F or college preparatory course requirements that are a prerequisite for admission to the California State University and the University of California with at least a "C" grade.

(3) Increases in the college participation rate.

(4) Significant increases in the number and percentage of pupils who take nationally normed, standardized tests used for college admission decisions, and increases in the results of the assessment administered through Article 4 (commencing with Section 60640) of Chapter 5 of Part 33.

(5) Significant increases in the number and percentage of pupils who enroll in and complete the advanced placement courses and receive a score of "3" or above.

(b) Applications by local educational agencies to the Superintendent of Public Instruction for the funding of academic achievement programs pursuant to this chapter shall include all the following elements to be considered complete and eligible for consideration:

(1) Data from the prior fiscal year for all of the items listed in subdivision (a).

(2) An assessment that identifies the amount of improvement at the qualifying school that is necessary in order to perform at a level equivalent to the statewide average on each of the items listed in paragraphs (1) to (5), inclusive, of subdivision (a).

(3) A comprehensive plan developed by the regional partnership describing how the funds provided pursuant to this chapter in combination with the matching funds provided by other participants in the regional partnership will be used to improve performance on any of the items listed in subdivision (a).

(4) An accountability plan that assesses the progress made by students at the qualifying school towards performance at the 1997–98 statewide average on each of the items listed in paragraphs (1) to (5), inclusive, of subdivision (a).

(5) Evidence that each partner in the regional partnership is prepared to commit the amount of funds and other support outlined in the comprehensive plan required pursuant to paragraph (3). Local education agencies shall provide evidence that the total contribution from all of the partners, including, but not necessarily limited to, the reasonable value of in-kind goods or services, equals the amount of the grant.

(c) As used in this chapter, the following terms have the following meanings, unless the context clearly requires otherwise:

(1) "Local educational agency" means school districts, county offices of education, or charter schools. "Institution of higher education" means any of the following:

(A) A California community college district.

(B) A campus of the California State University.

(C) A campus of the University of California.

(D) A member institution of the Association of Independent California Colleges and Universities.

(2) "Qualifying school" means a comprehensive high school that provides instruction in any of grades 9 to 12, inclusive, and the percentage of pupils who graduate from the school and are eligible for admission to the California State University or the University of California in the following year is below the statewide average according to information from the California Postsecondary Education Commission.

(3) "Regional organization" includes, but is not limited to, business, labor, and community-based organizations.

(4) "Regional partnership" means a combination of at least one school district or county office of education, at least one institute of

higher education, and at least one regional organization, each having an interest in and capacity to influence education in the region. "Regional partnership" is not limited to a combination formed pursuant to this chapter after the operative date of this chapter, but may also include a partnership in existence immediately preceding the operative date of this chapter if it complies with all of the requirements of this section. A partner may participate in more than one partnership and a partnership may encompass a geographic area that overlaps with an area covered by another partnership.

11021. (a) Pursuant to regulations and criteria approved by the State Board of Education, the Superintendent of Public Instruction shall develop an application inviting local educational agencies to apply to receive funds for qualifying schools, subject to an appropriation of funds for purposes of this section.

(b) Funds shall be distributed and dispersed equitably throughout the state in a manner consistent with the purposes of this chapter and that ensures that qualifying schools located in rural, urban, and suburban areas have access to these programmatic funds.

(c) Priority in the allocation of funding to qualifying schools shall be based upon a combination of the following factors that shall be given equal consideration:

(1) The qualifying school's relative low ranking in comparison to the statewide average percentage of high school graduates who complete the A-F or college preparatory course requirements for admission to the California State University and the University of California with a "C" grade or better.

(2) The qualifying school's relative low ranking in comparison to the statewide average percentage of high school pupils who take the nationally-normed, standardized tests used for college admission decisions.

(3) The qualifying school's relative low ranking in comparison to other schools maintaining the same grades in any of grades 9 to 12, inclusive, of the school-wide average scores on nationally-normed, standardized tests used for college admission decisions.

(4) The qualifying school's relative low-ranking in comparison to other schools in its college participation rate.

(d) Funds allocated to qualifying schools pursuant to this chapter shall be awarded annually by the Superintendent of Public Instruction for a period of up to four years only if funding is appropriated in the annual Budget Act if both of the following conditions are met:

(1) After the second full funded year, and each year thereafter, the grant may be renewed on an annual basis for up to two additional years if the local educational agency submits data to the State Department of Education that demonstrates the necessary qualifying levels of improvement at the qualifying school in comparison to the year immediately preceding the year in which

funds were provided to the school pursuant to this chapter, in accordance with subdivision (a) of Section 11020.

(2) The Superintendent of Public Instruction determines that the data submitted on behalf of qualifying schools demonstrates progress in each of the areas identified in subdivision (a) of Section 11020, as determined by relative improvement levels approved by the State Board of Education.

(e) Funds allocated pursuant to this section may not exceed one hundred dollars ($100) per pupil, nor shall it be less than twenty thousand dollars ($20,000), at a qualifying school in any single fiscal year. A qualifying school with less than 200 pupils may request funding of up to twenty thousand dollars ($20,000).

(f) Funds appropriated pursuant to this chapter may supplement, but may not supplant, any existing program or service provided at a qualifying school that is consistent with this chapter.

(g) No more than 5 percent of the amount that is appropriated to a local educational agency for expenditure at a qualifying school pursuant to this chapter shall be used for administrative costs.

(h) Grant recipients shall ensure that parents or guardians of all 8th grade pupils are notified of the course requirements that are a prerequisite for admission to the California State University and the University of California.

11022. Only those local educational agencies for which the allocation of state funds are included within the computation of the state's minimum funding obligation to school districts and community college districts under Section 8 of Article XVI of the California Constitution shall receive allocations for the purposes of this chapter.

11023. The Superintendent of Public Instruction, shall recommend, and the State Board of Education shall approve, a plan for the comprehensive evaluation of the program authorized in this chapter. The Superintendent of Public Instruction shall complete the evaluation and submit it to the State Board of Education by July 1, 2003. The State Board of Education shall submit the final evaluation and report to the Legislature by December 31, 2003, on all of the following:

(a) Changes in the number and percent of pupils who took nationally-normed, standardized tests used for college admission decisions.

(b) Changes in the school-wide average score on nationally-normed, standardized tests used for college admission decisions.

(c) Changes in the number and percentage of pupils who complete the A-F or college preparatory course requirements with at least a "C" grade.

(d) Changes in the number and percentage of pupils who complete advanced placement courses and received a score of "3" or above.

(e) Changes in the number of advanced placement courses taken by pupils.

(f) Changes in the number and percentage of parents or guardians of 8th grade pupils who were notified of the course requirements that are a prerequisite for admission to the California State University or the University of California.

(g) The college participation rates at qualifying schools before and after the implementation of program activities pursuant to this chapter.

(h) Recommendations for changes to this chapter that could further increase the percentage of high school pupils eligible for admission to the California State University or the University of California upon graduation from high school.

11024. It is the intent of the Legislature that grants pursuant to this chapter be funded by an appropriation in the annual Budget Act.

11024.5. This chapter shall become inoperative on July 1, 2004, and, as of January 1, 2005, is repealed, unless a later enacted statute that is enacted before January 1, 2005, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. Section 2 of this act shall become operative only if this act and AB 1292 of the 1997–98 Regular Session are both chaptered and take effect on or prior to January 1, 1999, and this act is chaptered last, in which case Section 1 of AB 1292 shall not become operative.

CHAPTER 1046

An act to repeal and add Section 5006.8 of the Public Resources Code, relating to Candlestick Park.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. The Legislature hereby finds and declares that the project, as defined in Section 5006.8 of the Public Resources Code, will further general statewide purposes, such as the elimination of blight and the redevelopment of the proposed project area, the generation of new sales tax revenues, property taxes, and other tax revenues to the state and state agencies, the creation of thousands of new jobs, and enhanced access of the public to use and enjoy the Candlestick Park Recreation Area, including, but not limited to, the statewide purposes specified in Chapter 2 of the Statutes of 1958, First Extraordinary Session.

SEC. 2. Section 5006.8 of the Public Resources Code is repealed.

SEC. 3. Section 5006.8 is added to the Public Resources Code, to read:

5006.8. (a) For purposes of this section, the following definitions shall apply:

(1) "City" means the City and County of San Francisco.

(2) "Project" means the development of a combination of uses, such as a stadium, retail and entertainment center, and associated support uses, including parking, approved by the voters of the city by Propositions D and F at the June 3, 1997, special election.

(3) "Project area" means the total area necessary for the project as shown on the site diagram.

(4) "Recreation area" means the Candlestick State Recreation Area.

(5) "Site diagram" means that certain preliminary conceptual site drawing, dated July 22, 1998, on file with the Department of City Planning of the city, showing, for reference purposes only, the project area, including the proposed location of the new ring road, the area within the inner circumference of the new ring road for permanent public parking use, and the area outside the outer circumference of the new ring road for temporary or intermittent public parking use on state property. For purposes of this section, the final site diagram for the project area, which shall supersede any preliminary site diagrams, shall be subject to the approval of the department and the State Lands Commission.

(6) "State property" means the property or interests in property owned by the state located within the project area. A portion of the state property is proprietary land under the jurisdiction of the Department of Parks and Recreation and the remainder of the state property is sovereign land under the jurisdiction of the State Lands Commission.

(b) Notwithstanding any other provision of law, the director may enter into agreements, on those terms and conditions that the director determines to be in the best interests of the state, concerning the development and operation of the project. The agreements may provide for, without limitation, easements, exchanges, quit claims, leases, operating agreements, special use permits, or agreements for the conveyance of fee title of any property interests of the department within the recreation area. The department shall receive at least fair market value for the property interests conveyed by the department. The department may execute leases, operating agreements, and special use permits regarding proprietary lands within the state property for terms not exceeding 66 years. The director may change the boundaries of the recreation area as necessary to reflect the agreements contemplated by this section.

(c) Notwithstanding any other provision of law, the State Lands Commission may enter into agreements regarding any sovereign lands within the state property, on those terms and conditions that the State Lands Commission determines to be in the best interests of the state, concerning the development and operation of the project. Subject to applicable requirements of the public trust for commerce,

navigation, and fisheries, the agreements may provide, without limitation, for leases, operating agreements, and, to the extent permitted under paragraph (1) or (2), sale or exchange agreements of all or any portion of state property. Those leases shall be for a term not exceeding 66 years. Any land or interest in land received in an exchange shall have a value that is equal to or greater than the value of the property interest conveyed by the State Lands Commission. In furtherance of the foregoing:

(1) The State Lands Commission may enter into agreements, including agreements providing for termination of the public trust or the termination of any trust imposed by Chapter 1333 of the Statutes of 1968, as amended, or both, for the exchange of trust land within the project area whereby any of the lands that are subject to the trust may be exchanged for other land inside or outside the project area that is at least equal or greater in value, which is useful for trust purposes, and that is in a location approved by the State Lands Commission, if the findings set forth in Section 5 of Chapter 310 of the Statutes of 1987 are made, or, for those lands that are not included in Chapter 1333 of the Statutes of 1968, as amended, if the requirements of Section 6307 are satisfied.

(2) For purposes of Section 3 of Article X of the California Constitution, the Legislature hereby finds and declares that tidelands within the project area that were reserved to the state solely for street purposes and that, as found by the State Lands Commission, meet each of the criteria set forth in subparagraphs (A) to (E), inclusive, are no longer useful for navigation purposes and are not necessary for those purposes, and may be sold by the State Lands Commission, to the city, free of the public trust or any trust imposed by Chapter 1333 of the Statutes of 1968, as amended, or both. Before any reserved street areas within the project area may be sold, the State Lands Commission shall make all of the following findings regarding reserved street areas proposed for sale:

(A) The area has been filled and reclaimed.

(B) The area is located within the outer circumference of the ring road for the project, as shown on the site diagram.

(C) The area is no longer needed or required for promotion of the public trust for commerce, navigation, and fisheries.

(D) The state will receive consideration for the sale of the street area that is equal to or greater in value than the value of the street areas sold.

(3) In any case in which the state, pursuant to this section, conveys filled tidelands or submerged lands to the city, the state shall reserve all minerals and all mineral rights in the lands of every kind and character now known to exist or hereafter discovered, including, but not limited to, oil and gas and rights thereto, together with the sole, exclusive, and perpetual right to explore for, remove, and dispose of those minerals by any means or methods suitable to the state or to its successors and assignees, except that, notwithstanding Chapter 1333

of the Statutes of 1968, as amended, or Section 6401, this reservation shall not include the right of the state or its successors or assignees in connection with any mineral exploration, removal, or disposal activity, to do either of the following:

(A) Enter upon, use, or damage the surface of the lands or interfere with the use of the surface by any grantee or by the grantee's successors or assignees.

(B) Conduct any mining activities of any nature whatsoever above a plane located 500 feet below the surface of the lands without the prior written permission of any grantee of the lands or the grantee's successors or assignees.

(4) With respect to any filled tidelands or submerged lands conveyed to the city pursuant to Chapter 2 of the Statutes of 1958, First Extraordinary Session, the state shall comply with the limitations on any mineral rights reservations provided for in paragraph (3), and shall modify the instruments reserving those mineral rights reservations, as appropriate, to memorialize those limitations.

(d) The property interests in the state property to be conveyed to the city pursuant to the authorizations contained in subdivisions (b) and (c) shall be subject to the following additional limitations:

(1) No more than 20 acres of the state property may be paved or otherwise used as permanent parking for the project.

(2) No more than 60 acres of state property may be used for intermittent public parking for football games and a limited number of other special events related to the project, and for all other days of the year, that state property shall be available to the public for recreation purposes. Any agreements related to parking for the project on state property north of Yosemite Slough shall terminate no later than January 31, 2004.

(3) The consideration for those property interests may consist of any of the following:

(A) Monetary consideration.

(B) Improvements to the recreation area that support its use as a public park.

(C) Replacement of any portion of the recreation area conveyed to the city with recreation benefits or facilities of equal or greater value within the recreation area.

(D) Other nonmonetary consideration, including, but not limited to, relinquishment by the city of its reversionary rights over parcels conveyed to the state in 1983 for formation of the recreation area.

(E) Any combination of the foregoing.

(e) All state agencies shall take any necessary or appropriate action to implement this section in a timely manner.

SEC. 4. Notwithstanding the Outdoor Advertising Act (Chapter 2 (commencing with Section 5200) of Division 3 of the Business and Professions Code), any sign permitted under Proposition F, approved by the voters of the City and County of San Francisco, at

the June 3, 1997, special election, is hereby permitted. Nothing in this section restricts the ability of the state to permit, approve, install, control, or regulate signs on state property.

SEC. 5. An action may be brought under Chapter 4 (commencing with Section 760.010) of Title 10 of Part 2 of the Code of Civil Procedure by the parties to any agreement entered into pursuant to Section 5006.8 of the Public Resources Code to confirm the validity of an agreement entered into pursuant to that section. In addition to the recitations and determinations required by Section 764.080 of the Code of Civil Procedure, the statement of decision in the action shall include a recitation of the underlying facts, and a determination whether the agreement meets the requirements of Section 5006.8 of the Public Resources Code, Sections 3 and 4 of Article X of the California Constitution, and any other law applicable to the validity of the agreement.

CHAPTER 1047

An act to add Section 54761.3 to the Education Code, relating to school finance.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 54761.3 is added to the Education Code, to read:

54761.3. Notwithstanding any other provision of law, a school district that chose to designate home-to-school transportation as the program to which a supplemental grant was to be added, thereby increasing its home-to-school transportation allowance, may, for the 1996–97 fiscal year, transfer into another categorical education program account set forth in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761 the amount that the school district's home-to-school transportation allowance for the 1996–97 fiscal year exceeded its approved home-to-school transportation costs for the 1995–96 fiscal year. The amount transferred pursuant to this section may not exceed the amount of supplemental grant funding that was added to the home-to-school transportation allowance of the school district. In a manner prescribed by the Superintendent of Public Instruction, eligible school districts shall request, no later than February 1, 1999, that the Superintendent of Public Instruction initiate the transfer. The request shall designate the program or programs to which the

supplemental grant funding is to be transferred. The Superintendent of Public Instruction shall adjust program allocations as requested.

CHAPTER 1048

An act to amend Sections 22110.1, 22122.5, 22155.5, 22200, 22202, 22304, 22307, 22311, 22402, 26000, 26000.5, 26004, 26105, 26112, 26114, 26115, 26116, 26128, 26129, 26134, 26137, 26200, 26201, 26202, 26204, 26206, 26207.5, 26209, 26300, 26301, 26400, 26401, 26402, 26501, 26503, 26504, 26506, 26603, 26701, 26702, 26703, 26704, 27301, 27401, 27409, 28100, and 28101 of, to add Sections 22001.5, 22403, and 26000.6 to, and to repeal Sections 26111, and 26207 of, the Education Code, relating to the State Teachers' Retirement System, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 22001.5 is added to the Education Code, to read:

22001.5. The Legislature hereby finds and declares that on July 1, 1996, the State Teachers' Retirement System Cash Balance Plan was created and established to provide a retirement plan for persons employed to perform creditable service for less than 50 percent of the full-time equivalent for the position. The persons eligible for the Cash Balance Plan were excluded from mandatory membership in the State Teachers' Retirement System Defined Benefit Plan. Both plans are administered by the Teachers' Retirement Board. Prior to the creation and establishment of the Cash Balance Plan, the State Teachers' Retirement System Defined Benefit Plan had been identified simply as the State Teachers' Retirement System. As a result, the system was identified as both the administrative body and the retirement plan. The State Teachers' Retirement Law was amended to identify the retirement plan as the State Teachers' Retirement System Defined Benefit Plan in order to distinguish that plan from the Cash Balance Plan. Because both plans were intended to provide for the retirement of teachers and other persons employed in connection with public schools of this state and schools supported by this state, a merger of these two plans is now hereby made for the purpose of establishing a single retirement plan that shall be known and may be cited as the State Teachers' Retirement Plan consisting of the different benefit programs set forth in this part and Part 14 (commencing with Section 26000). This plan shall be administered by the Teachers' Retirement Board as set forth in this part and Part 14 (commencing with Section 26000). This part, together with Part

14 (commencing with Section 26000) shall be known and may be cited as the Teachers' Retirement Law.

SEC. 2. Section 22110.1 of the Education Code is amended to read:

22110.1. "Cash Balance Benefit Program" means the benefit program of the State Teachers' Retirement Plan as set forth in Part 14 (commencing with Section 26000).

SEC. 3. Section 22122.5 of the Education Code is amended to read:

22122.5. "Defined Benefit Program" means the Defined Benefit Program provided in the State Teachers' Retirement Plan as set forth in this part.

SEC. 4. Section 22155.5 of the Education Code is amended to read:

22155.5. "Plan" means the State Teachers' Retirement Plan.

SEC. 5. Section 22200 of the Education Code is amended to read:

22200. (a) The plan and the system are administered by the Teachers' Retirement Board. The members of the board are as follows:

(1) The Superintendent of Public Instruction.

(2) The Controller.

(3) The Treasurer.

(4) The Director of Finance.

(5) One person who, at the time of appointment, is a member of the governing board of a school district or a community college district.

(6) Three persons who are either members of the Defined Benefit Program or participants in the Cash Balance Benefit Program, as follows:

(A) Two persons who, at the time of appointment, are classroom teachers in kindergarten or grades 1 through 12.

(B) One person who, at the time of appointment, is a community college instructor with expertise in the areas of business or economics or both business and economics and who shall be appointed by the Governor for a term of four years from a list submitted by the Board of Governors of the California Community Colleges.

(7) One person who is either a retired member under this part or a retired participant under Part 14 (commencing with Section 26000).

(8) One officer of a life insurance company appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(9) One officer of a bank or a savings and loan institution who has had at least five years of broad professional investment experience handling various asset classes such as stocks, bonds, and mortgage investments and who shall be appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(10) One person representing the public, appointed by the Governor for a term of four years, subject to confirmation by the Senate.

(b) The members of the board described in paragraphs (5) and (7) and subparagraph (A) of paragraph (6) of subdivision (a) shall be appointed by the Governor for four-year terms from a list submitted by the Superintendent of Public Instruction.

(c) The members of the board shall annually elect a chairperson and vice chairperson.

SEC. 6. Section 22202 of the Education Code is amended to read:

22202. The board has exclusive control of the administration of the funds. No transfers or disbursements of any amount from the funds shall be made except upon the authorization of the board for the purpose of carrying into effect the provisions of this part and Part 14 (commencing with Section 26000).

SEC. 7. Section 22307 of the Education Code is amended to read:

22307. (a) The board may authorize the transfer and disbursement of funds from the retirement fund for the purpose of carrying into effect this part and Part 14 (commencing with Section 26000) upon the signature of either or both of its chairperson and vice chairperson or the chief executive officer or any employee of the system designated by the chief executive officer.

(b) Notwithstanding Section 13340 of the Government Code, the board may disburse funds for the payment of benefits to members and beneficiaries of the Defined Benefit Program as well as to participants and beneficiaries of the Cash Balance Benefit Program, for the payment of refunds and for investment transactions and these funds shall not be required to be appropriated through the annual Budget Act. Funds for the payment of administrative expenses are not continuously appropriated, and shall be appropriated by the annual Budget Act.

SEC. 7.5. Section 22304 of the Education Code is amended to read:

22304. (a) The costs of administration of the plan shall be paid from the retirement fund and those costs may not exceed the amount made available by law during any fiscal period.

(b) The administrative costs of the plan shall be divided proportionately in accordance with the assets of the Defined Benefit Program and the Cash Balance Benefit Program.

SEC. 8. Section 22311 of the Education Code is amended to read:

22311. (a) The board shall keep in convenient form any data necessary for the actuarial valuation of the plan.

(b) The board shall make an actuarial investigation into the mortality, service, and other experience of members and beneficiaries of the Defined Benefit Program as well as an actuarial review of the goals regarding the sufficiency of the Gain and Loss Reserve with respect to the Cash Balance Benefit Program. This investigation and review shall include an actuarial valuation of the

assets and liabilities of the plan, and shall be performed at least once every six years. The actuary shall perform the actuarial valuation using actuarial assumptions adopted by the board and that are, in the aggregate, reasonably related to the past experience of the plan and the best estimate by the actuary of the future experience of the plan. The report of the actuary of the results of the actuarial valuation shall identify and include the components of normal cost and adequate information to determine the effects of changes in actuarial assumptions. Copies of the report on the actuarial valuation shall be transmitted to the Governor and to the Legislature. Upon the basis of any or all of the actuarial investigation and valuation, the board shall adopt for the plan any rates of return on investments, rates of contribution to the retirement fund, mortality, service, and other tables it deems necessary.

SEC. 9. Section 22402 of the Education Code is amended to read:

22402. Earned interest with respect to the Defined Benefit Program that is not credited to accounts maintained pursuant to either this part or Part 14 (commencing with Section 26000) and other income with respect to the Defined Benefit Program shall be allocated to provide benefits under this part.

SEC. 10. Section 22403 is added to the Education Code, to read:

22403. The Legislature hereby finds and declares that pursuant to the authorizing legislation creating and establishing the Cash Balance Plan, the board transferred one million dollars ($1,000,000) in the form of a loan from the retirement fund holding assets at that time exclusively for the State Teachers' Retirement System Defined Benefit Plan to the newly created Cash Balance Plan. That loan represented an asset receivable to the State Teachers' Retirement System Defined Benefit Plan and a liability obligation to the State Teachers' Retirement System Cash Balance Plan. As a result of the merger of these two plans authorized under this part, the assets held in the retirement fund shall hereby reflect the combined assets of the State Teachers' Retirement Plan. That loan shall be discharged by the creation and establishment of the State Teachers' Retirement Plan pursuant to the merger.

SEC. 11. Section 26000 of the Education Code is amended to read:

26000. The Legislature hereby finds and declares that the State Teachers' Retirement System Cash Balance Plan was created and established on July 1, 1996, to provide a retirement plan for persons employed to perform creditable service for less than 50 percent of the full-time equivalent for the position. The persons eligible for the Cash Balance Plan were excluded from mandatory membership in the State Teachers' Retirement System Defined Benefit Plan. Both plans are administered by the Teachers' Retirement Board. Because both plans were intended to provide for the retirement of teachers and other persons employed in connection with the public schools of this state and schools supported by this state, a merger of these two plans is now hereby made for the purpose of establishing a single

retirement plan that shall be known and may be cited as the State Teachers' Retirement Plan consisting of the different benefit programs set forth in this part and Part 13 (commencing with Section 22000). The plan shall be administered by the Teachers' Retirement Board as set forth in this part and Part 13 (commencing with Section 22000). As a result of this merger, a Cash Balance Benefit Program will be provided under the State Teachers' Retirement Plan and that program is set forth in this part.

The governing board of a school district, community college district, or county office of education may, by formal action, elect to provide the benefits of the Cash Balance Benefit Program under this part for their employees.

SEC. 12. Section 26000.5 of the Education Code is amended to read:

26000.5. (a) An employer whose governing board has elected to provide the benefits of this part for its employees pursuant to Section 26000 shall enter into an agreement with the State Teachers' Retirement System. The agreement shall specify the terms and conditions of the employer's formal action to provide the Cash Balance Benefit Program and shall remain in effect unless or until the employer exercises the right to discontinue the plan pursuant to Chapter 17 (commencing with Section 28100).

SEC. 13. Section 26000.6 is added to the Education Code, to read:

26000.6. (a) An election by any employer to provide the benefits of the Cash Balance Plan for their employees prior to the merger described in Section 26000 shall be deemed to constitute an election to provide the Cash Balance Benefit Program under the State Teachers' Retirement Plan.

(b) Participation in the Cash Balance Plan by any participant prior to the merger described in Section 26000 shall be deemed to constitute participation in the Cash Balance Benefit Program under the State Teachers' Retirement Plan.

(c) Any beneficiary under the Cash Balance Plan prior to the merger described in Section 26000 shall be deemed to be a beneficiary under the Cash Balance Benefit Program under the State Teachers' Retirement Plan.

SEC. 14. Section 26004 of the Education Code is amended to read:

26004. Notwithstanding any other provision of law:

(a) The benefits payable to any participant or beneficiary under this part shall be subject to the limitations imposed by Section 415 of Title 26 of the United States Code.

(b) The amount of compensation that is taken into account in computing benefits under this part for a plan year shall not exceed the annual compensation limit applicable to that plan year in accordance with Section 401(a)(17) of Title 26 of the United States Code as that section read on the effective date of this section and as that section may be amended after that date. The determination of compensation for a 12-month period shall be subject to the annual

compensation limit in effect for the calendar year in which the 12-month period begins. In a determination of average compensation over more than one 12-month period, the amount of compensation taken into account for each 12-month period shall be subject to the respective annual compensation limit applicable to that period.

(c) Distributions from the plan under this part shall be made in accordance with Section 401(a)(9) of Title 26 of the United States Code, including the incidental death benefit requirements of Section 401(a)(9)(G) and the regulations thereunder. The required beginning date of benefit payments that represent the entire interest of the participant shall be as follows:

(1) In the case of a lump-sum distribution of a retirement benefit, disability benefit, or termination benefit, the lump-sum payment shall be made not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of $70^1/_2$ years or the calendar year in which the participant terminates all employment subject to coverage by the plan.

(2) In the case of a retirement benefit or disability benefit that is to be paid in the form of an annuity, payment of the annuity shall begin not later than April 1 of the calendar year following the later of the calendar year in which the participant attains the age of $70^1/_2$ years or the calendar year in which the participant terminates employment in all positions subject to coverage by the plan, with the annuity to continue over the life of the participant or the life of the participant and the participant's option beneficiary, or over a period not to exceed the life expectancy of the participant or the life expectancy of the participant and the participant's option beneficiary.

(3) In the case of a death benefit, distributions shall commence no later than the date provided in Section 27001.

(d) If a person becomes entitled to a distribution from the plan under this part that constitutes an eligible rollover distribution within the meaning of Section 401(a)(31) of Title 26 of the United States Code, the person may elect under terms and conditions established by the board to have the distribution or a portion thereof paid directly to a plan that constitutes an eligible retirement plan within the meaning of Section 401(a)(31), as specified by that person. Upon the exercise of the election by a person with respect to a distribution or a portion thereof, the distribution from the plan of the amount so designated, once distributable under the terms of the plan, shall be made in the form of a direct rollover to the eligible retirement plan so specified.

(e) The amount of any benefit from the plan under this part which is determined on the basis of actuarial assumptions shall be based on actuarial assumptions adopted by the board pursuant to Section 26213 as a plan amendment with respect to the Cash Balance Benefit Program and those assumptions shall preclude employer discretion

and comply with Section 401(a)(25) of Title 26 of the United States Code.

SEC. 15. Section 26105 of the Education Code is amended to read:

26105. "Annuitant Reserve" means the reserve account established by the board within the State Teachers' Retirement Fund for the payment of monthly annuities with respect to the Cash Balance Benefit Program.

SEC. 16. Section 26111 of the Education Code is repealed.

SEC. 17. Section 26112 of the Education Code is amended to read:

26112. "Cash Balance Benefit Program" means the benefit program set forth in this part of the State Teachers' Retirement Law.

SEC. 18. Section 26114 of the Education Code is amended to read:

26114. "Death benefit" means the benefit payable under this part upon the death of the participant.

SEC. 19. Section 26115 of the Education Code is amended to read:

26115. "Defined Benefit Program" means the Defined Benefit Program of the State Teachers' Retirement Plan as set forth in Part 13 (commencing with Section 22000).

SEC. 20. Section 26116 of the Education Code is amended to read:

26116. "Disability benefit" means an amount payable under this part for permanent and total disability that is equal to the sum of the participant's employee account and employer account as of the disability date and is payable pursuant to either Section 26905 or 26906.

SEC. 21. Section 26128 of the Education Code is amended to read:

26128. "Fund" means the Teachers' Retirement Fund.

SEC. 22. Section 26129 of the Education Code is amended to read:

26129. "Gain and Loss Reserve" means the reserve account established by the board within the fund with respect to the Cash Balance Benefit Program to be drawn upon to the extent necessary to credit interest to employee accounts and employer accounts at the minimum interest rate during years in which the plan's investment earnings with respect to the Cash Balance Benefit Program are not sufficient for that purpose, and where necessary, to provide additions to the Annuitant Reserve for monthly annuity payments.

SEC. 23. Section 26134 of the Education Code is amended to read:

26134. "Plan" means the State Teachers' Retirement Plan.

SEC. 24. Section 26137 of the Education Code is amended to read:

26137. "Retirement benefit" means an amount payable under this part in the event of the participant's retirement for service that is equal to the sum of the participant's employee account and employer account as of the retirement date and that is payable pursuant to either Section 26806 or 26807.

SEC. 25. Section 26200 of the Education Code is amended to read:

26200. Employee contributions, employer contributions, investment earnings, and any other amounts provided under this part shall be deposited into the Teachers' Retirement Fund. Disbursement of money from the fund shall be made upon claims

made pursuant to Section 26209 and duly audited in the manner prescribed for the disbursement of other public funds. Notwithstanding Section 13340 of the Government Code, the Teachers' Retirement Fund is continuously appropriated for the payment of benefits and investment transactions pursuant to this part. Disbursements may be made to return funds deposited in the fund in error.

SEC. 26. Section 26201 of the Education Code is amended to read:

26201. Investment earnings shall be collected by the Treasurer, and together with any other moneys received in connection with the Cash Balance Benefit Program, shall be immediately deposited to the credit of the Teachers' Retirement Fund and reported to the system.

SEC. 27. Section 26202 of the Education Code is amended to read:

26202. (a) The board shall establish a Gain and Loss Reserve within the Teachers' Retirement Fund for the Cash Balance Benefit Program. The board has sole authority to administer the Gain and Loss Reserve to be drawn upon to the extent necessary to credit interest to employee accounts and employer accounts at the minimum interest rate during years in which the investment earnings of the plan with respect to the Cash Balance Benefit Program are not sufficient for that purpose, and, where necessary, to provide additions to the Annuitant Reserve for monthly annuity payments.

(b) The board shall establish and periodically review goals regarding the sufficiency of the Gain and Loss Reserve based on the recommendation of the actuary.

(c) In the event that the total amount of investment earnings of the plan with respect to the Cash Balance Benefit Program for any plan year exceeds the sum of the total amount required to credit all employee and employer accounts at the minimum interest rate for the plan year plus the administrative costs of the plan with respect to the Cash Balance Benefit Program for the plan year, the board shall determine the amount, if any, that is to be credited to the Gain and Loss Reserve for the plan year. That determination shall be made not later than December 31 of the year following the plan year. In determining whether an amount is to be credited to the Gain and Loss Reserve, the board shall consider the sufficiency of the reserve in light of the goal established for the sufficiency and the recommendations of the actuary.

SEC. 28. Section 26204 of the Education Code is amended to read:

26204. The board shall establish an Annuitant Reserve within the Teachers' Retirement Fund for the Cash Balance Benefit Program. The board has sole authority to administer the Annuitant Reserve for the payment of annuities. The board may transfer the credits from a participant's employee account and employer account to the Annuitant Reserve upon election of an annuity by the participant or beneficiary of the participant.

SEC. 29. Section 26206 of the Education Code is amended to read:

26206. All administrative costs of the board and system for the plan with respect to the Cash Balance Benefit Program shall be paid from the Teachers' Retirement Fund.

SEC. 30. Section 26207 of the Education Code is repealed.

SEC. 31. Section 26207.5 of the Education Code is amended to read:

26207.5. In no event shall the funding of the Cash Balance Benefit Program be a liability of the state or the General Fund, nor shall the General Fund be used to offset or fund any liabilities attributed to the operation of the Cash Balance Benefit Program.

SEC. 32. Section 26209 of the Education Code is amended to read:

26209. The board may authorize the transfer and disbursement of funds from the Teachers' Retirement Fund for the purpose of carrying into effect the Cash Balance Benefit Program upon the signature of its chairperson, vice chairperson, the chief executive officer, or any employee of the system designated by the chief executive officer.

SEC. 33. Section 26300 of the Education Code is amended to read:

26300. (a) Within 10 working days following the later of the first day of employment, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program, the employer shall make available to the employee the following information:

(1) The employee's rights and responsibilities as a participant in the program, the employer's responsibilities under the program, and the benefits payable under the program.

(2) The employee's right to elect membership in the Defined Benefit Program in lieu of participation in the Cash Balance Benefit Program, the rights and responsibilities of a member and the employer under the Defined Benefit Program, and benefits payable under the Defined Benefit Program.

(b) Written acknowledgment by the employee that he or she has received the information specified in subdivision (a) shall be retained in the employer's files on a form prescribed by the system.

(c) If an employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect other coverage in lieu of the Cash Balance Benefit Program pursuant to Section 26400, the employer shall, within 10 working days following the later of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the program or the effective date of the employer's governing board's action to provide the program, notify existing employees of the following:

(1) The employee's right to elect other coverage if offered by the employer in lieu of participation in the Cash Balance Benefit Program.

(2) The rights and responsibilities of the employer and a participant in an alternative retirement plan if offered by the employer.

(3) The benefits payable under an alternative retirement plan if offered by the employer.

SEC. 34. Section 26301 of the Education Code is amended to read:

26301. (a) Employers shall report, on a form prescribed by the system, contributions paid on behalf of each participant in each pay period, along with all other information required by the system no later than 15 calendar days following the last day of the pay period in which the salary was paid, and the report is delinquent immediately thereafter.

(b) The board may assess a penalty against the employer for a report submitted late or in an unacceptable form.

SEC. 35. Section 26400 of the Education Code is amended to read:

26400. (a) A person employed to perform creditable service for less than 50 percent of the full-time equivalent for the position shall become a participant on the later of the first day on which creditable service is performed for an employer that provides the Cash Balance Benefit Program or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program, provided the person is not subject to mandatory membership in the Defined Benefit Program except as provided in Section 26402.

(b) If the employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect coverage under social security or an alternative retirement plan offered by the employer in addition to the Cash Balance Benefit Program, the employee may elect within 60 calendar days of the later of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program to be covered by social security or to participate in the alternative retirement plan in lieu of participating in the Cash Balance Benefit Program. Any election shall not preclude an employee from participating in the Cash Balance Benefit Program at a later date so long as the Cash Balance Benefit Program is provided by the employer and the employee is eligible to participate in the Cash Balance Benefit Program.

(c) If subdivision (b) is applicable, the employer shall inform employees pursuant to subdivision (c) of Section 26300 of their right to make an election and the election shall be made on a form prescribed by the system and filed with the employer. The election shall become effective on the later of the first day on which creditable service is performed or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(d) If the participant's basis of employment with an employer that provides the Cash Balance Benefit Program changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer and all other employers shall be subject to coverage by the Defined Benefit Program as of the first day of the pay period in which the change in the participant's basis of employment occurred, except as provided in Section 26402.

SEC. 36. Section 26401 of the Education Code is amended to read:

26401. (a) A member of the Defined Benefit Program who is employed to perform creditable service for less than 50 percent of the full-time equivalent for the position for an employer that provides the Cash Balance Benefit Program may elect to become a participant for creditable service subject to coverage under the Cash Balance Benefit Program for that employer provided that the creditable service is not performed for the same employer with whom the member is also subject to mandatory membership in the Defined Benefit Program.

(b) The election shall be made on a form prescribed by the system and shall be filed with the employer within 60 calendar days of the later of the first day of employment with an employer that provides the Cash Balance Benefit Program, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(c) Employers shall make available to employees specified in subdivision (a) information and forms provided by the system for making an election regarding participation, and shall maintain the written election by the employee in employer files. The election shall become effective on the first day of the pay period following the pay period in which the election is made.

(d) If an election is made pursuant to subdivision (a) and the participant's basis of employment with that employer changes to employment to perform creditable service for 50 percent or more of the full-time equivalent for the position, contributions to the Cash Balance Benefit Program on behalf of the participant shall no longer be made and creditable service performed for that employer and all other employers shall be subject to coverage under the Defined Benefit Program as of the first day of the pay period in which the change in the participant's basis of employment occurred, except as provided in Section 26402.

SEC. 37. Section 26402 of the Education Code is amended to read:

26402. A member of the Defined Benefit Program who is employed by an employer on a full-time basis to perform creditable service subject to coverage under the Defined Benefit Program, may participate in the Cash Balance Benefit Program for creditable

service performed for a different employer if the different employer provides the Cash Balance Benefit Program and would otherwise contribute to social security or an alternative retirement plan on behalf of the member for that service.

SEC. 38. Section 26501 of the Education Code is amended to read:

26501. Except as provided in Section 26504, the participant shall contribute an amount equivalent to 4 percent of salary.

SEC. 39. Section 26503 of the Education Code is amended to read:

26503. Except as provided in Sections 26504 and 26507, the employer shall contribute an amount equivalent to 4 percent of salary for each participant employed by the employer.

SEC. 40. Section 26504 of the Education Code is amended to read:

26504. The employer may enter into a collective bargaining agreement to pay a different employer contribution rate and a different employee contribution rate, provided all of the following conditions are met:

(a) The sum of the employee contributions and employer contributions for each participant shall equal or exceed 8 percent of salary.

(b) The employee contribution rate shall not exceed the employer contribution rate.

(c) The employee contribution rate and employer contribution rate shall be the same for each participant employed by the employer.

(d) The employee contribution rate and employer contribution rate shall be in one-quarter percent increments.

(e) The employee contribution rate and employer contribution rate as determined under the collective bargaining agreement shall become effective on the first day of the plan year following notification to the system and shall remain in effect for at least one plan year. However, the employee contribution rate and the employer contribution rate as determined under the collective bargaining agreement may become effective as of the first day of the plan year in which notice is given if it is so provided in the collective bargaining agreement and if a lump-sum contribution is made to the plan equal to the additional employee and employer contributions, if any, that would have been required if the contribution rates had been in effect on the first day of the plan year. Interest shall be credited at the minimum interest rate with respect to the lump-sum contribution commencing with the first month after the contribution is made.

(f) The employer has filed notice of the employee contribution rate and the employer contribution rate on a form prescribed by the system.

SEC. 41. Section 26506 of the Education Code is amended to read:

26506. (a) Except as provided in subdivision (b), participants shall not make voluntary pretax or post-tax contributions into the Cash Balance Benefit Program, nor shall participants redeposit

amounts previously distributed from employee accounts or employer accounts.

(b) Pursuant to terms and conditions established by the board, participants may be permitted to transfer funds from eligible retirement plans into the Cash Balance Benefit Program to the extent that the transfers are allowable under and are completed in a manner prescribed by applicable federal and state laws, and any related regulations.

(c) Funds deposited with the Cash Balance Benefit Program by a participant pursuant to subdivision (b) shall be credited to the participant and identified separately from credits in the participant's employee and employer accounts. Funds so deposited shall be credited with interest pursuant to Section 26604.

SEC. 42. Section 26603 of the Education Code is amended to read:

26603. All employee contributions shall be credited to employee accounts and all employer contributions shall be credited to employer accounts as of the first calendar day following the date the contributions are received by the system.

SEC. 43. Section 26701 of the Education Code is amended to read:

26701. The right of a participant to a benefit under this part, whether by lump sum or annuity, is not subject to execution or any other process whatsoever, except to the extent permitted by Section 704.110 of the Code of Civil Procedure, and is unassignable except as specifically provided under this part.

SEC. 44. Section 26702 of the Education Code is amended to read:

26702. (a) For the purpose of payments into or out of the fund for adjustments of errors or omissions with respect to the Cash Balance Benefit Program, the period of limitation shall be applied as follows:

(1) No action may be commenced by or against the board, the system, or the plan more than three years after all obligations to or on behalf of the participant or beneficiary have been discharged.

(2) In cases where the system makes an error resulting in incorrect payment to the participant or beneficiary, the system's right to commence recovery shall expire three years from the date of payment.

(3) If an erroneous payment is made due to lack of information or inaccurate information regarding eligibility of a participant or beneficiary to receive a benefit from the Cash Balance Benefit Program, the period of limitation shall commence when the system discovers the erroneous payment.

(b) Notwithstanding any other provision of this section, if any erroneous payment has been made on the basis of fraud or intentional misrepresentation by a participant or beneficiary, or other party in relation to or on behalf of a participant or beneficiary, the three-year period of limitation shall not be deemed to commence or to have commenced until the system discovers the erroneous payment.

SEC. 45. Section 26703 of the Education Code is amended to read:

26703. The signature of the spouse of a participant shall be required on a designation of beneficiary form or an application for a retirement benefit, disability benefit, or termination benefit under this part, unless the participant declares in writing, under penalty of perjury, that one of the following conditions exists:

(a) The participant is not married.

(b) The participant does not know, and has taken all reasonable steps to determine, the whereabouts of the spouse.

(c) The spouse is incapable of executing the acknowledgment because of an incapacitating mental or physical condition.

(d) The participant and spouse have executed a marriage settlement agreement pursuant to Part 5 (commencing with Section 1500) of Division 4 of the Family Code that makes the community property law inapplicable to the marriage.

(e) The current spouse has no identifiable community property interest in the benefit.

SEC. 46. Section 26704 of the Education Code is amended to read:

26704. If a spouse refuses to sign a beneficiary designation, an application for a retirement benefit, disability benefit, or termination benefit payable under this part, the participant may bring an action in court to enforce the spousal signature requirement or to waive the spousal signature requirement. Either party may bring an action pursuant to Section 1101 of the Family Code to determine the rights of the party.

SEC. 47. Section 27301 of the Education Code is amended to read:

27301. (a) The plan's obligations under this part to a participant or beneficiary who elected to receive a benefit in the form of an annuity, cease upon distribution of the final monthly payment of the annuity.

(b) Deposit in the United States mail of a warrant drawn as directed by the participant or beneficiary and addressed as directed by the participant or beneficiary constitutes distribution of the benefit under this part.

(c) Deposit in the United States mail of a notice that the requested electronic funds transfer has been made as directed by the participant or beneficiary constitutes distribution of the benefit under this part.

(d) Distribution under subdivision (b) or (c) pursuant to the board's determination in good faith of the existence, identity, or other facts relating to entitlement of persons constitutes a complete discharge and release of the board, system, and plan from liability for payments under this part.

SEC. 48. Section 27401 of the Education Code is amended to read:

27401. For purposes of this chapter, "nonparticipant spouse" means the spouse or former spouse who is being or has been awarded a community property interest in the benefits determined by reference to the amounts credited to a participant's employee and employer accounts or the participant's annuity. A nonparticipant

spouse who is awarded separate nominal accounts is not a participant in the Cash Balance Benefit Program. A nonparticipant spouse who receives or is awarded an interest in a participant's annuity is not a participant in the Cash Balance Benefit Program.

SEC. 49. Section 27409 of the Education Code is amended to read:

27409. Upon being awarded separate nominal accounts or an interest in the annuity of a participant, a nonparticipant spouse shall provide the system with proof of his or her date of birth, social security number, and any other information requested by the system, in the form and manner requested by the system.

SEC. 50. Section 28100 of the Education Code is amended to read:

28100. (a) The employer may discontinue providing the Cash Balance Benefit Program at anytime in accordance with the terms and conditions of the employer's governing board's formal action to provide the program.

(b) The employer shall notify the system of the decision to discontinue the plan no less than 90 calendar days prior to the effective date of discontinuance. Such notice shall be submitted on a form prescribed by the system.

SEC. 51. Section 28101 of the Education Code is amended to read:

28101. (a) Upon discontinuation of the Cash Balance Benefit Program by the employer, the system will hold the employee and employer accounts for the benefit of the participant. The participant is immediately vested in both employee and employer accounts including accrued interest.

(b) Both employee and employer accounts will continue to be credited with interest at the minimum interest rate so long as there is an undistributed balance in such accounts.

CHAPTER 1049

An act to add Section 6257.5 to, and to add Chapter 3 (commencing with Section 15650) to Part 9 of Division 3 of Title 2 of, the Government Code, relating to the State Board of Equalization.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 6257.5 is added to the Government Code, to read:

6257.5. This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure.

SEC. 2. Chapter 3 (commencing with Section 15650) is added to Part 9 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 3. ACCESS TO PUBLIC RECORDS

15650. For purposes of this chapter, "public record" means any public record as defined in subdivision (d) of Section 6252.

15651. (a) In light of State Board of Equalization v. Superior Court, 10 Cal.App.4th 1177, in which the Court of Appeal affirmed an order of the superior court that the State Board of Equalization disclose its working law, it is the intent of the Legislature, in enacting this chapter, to establish procedures and mechanisms that facilitate maximum accessibility to the public records maintained by the board.

(b) The Legislature finds and declares that greater disclosure and better understanding of tax laws and regulations will encourage increased tax compliance.

15652. Pursuant to Section 6253, the State Board of Equalization shall adopt regulations to establish procedures and guidelines to access public records. These regulations shall facilitate maximum public accessibility to the board's public records. These regulations shall specifically identify and describe the types of public records pertaining to the tax and the fee programs maintained by the board.

15653. Notwithstanding Section 7550.5, the State Board of Equalization shall study and report to the Legislature, on or before January 1, 2000, on the feasibility and cost of creating and maintaining a subject matter index of public records pertaining to the tax and fee program administered by the board.

CHAPTER 1050

An act to amend and supplement the Budget Act of 1998 (Chapter 324 of the Statutes of 1998), and to amend Section 53 of Chapter 330 of the Statutes of 1998, relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

On this date I am signing Assembly Bill No. 2794 with a reduction.

This bill would appropriate $18,913,000 General Fund and special funds for various programs as a supplement to the Budget Act of 1998 (Ch. #324, 1998) and reappropriate $240,000 from the Proposition 98 Reversion Account.

I am sustaining $70,000 Section 4 (cx) for the La Mesa Community Center. I am reducing Section 28, (q) by $20,000 leaving $70,000 for support of the Pasadena Youth Center. I am deleting Section 2, Section 3, Section 4, Section 5, Section 6, Section 7, Section 8, Section 8.5, Section 9, Section 10, Section 11, Section 12, Section 13, Section 14, Section 15, Section 16, Section 17, Section 18, Section 19, Section 20, Section 21, Section 22, Section 23, Section 24, Section 25, Section 26, Section 27, Section 28 (a), (b), (c), (e), (g), (j), (k), (m), (n), (r) and Section 29.

Notwithstanding the merits of the augmentations, it is more critical that the State have a two percent reserve.

PETE WILSON, Governor

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

SECTION 1. Except as otherwise provided in Sections 20 to 29, inclusive, of this act, the appropriations made by this act are in augmentation of the appropriations made in Section 2.00 of the Budget Act of 1998 (Ch. 324, Stats. 1998), and are subject to the provisions of that act, as appropriate, including, as applicable, the provisions of that act that apply to the items of appropriation that are augmented by this act. The references in this act to item numbers refer to items of appropriation in Section 2.00 of the Budget Act of 1998.

SEC. 2. The sum of three hundred thousand dollars ($300,000) is hereby appropriated from the State Emergency Telephone Number Account, General Fund to the Department of General Services, in augmentation of the appropriation made in Item 1760-101-0022, for reimbursement of local agencies and service suppliers or communications companies for costs incurred pursuant to Sections 41137, 41137.1, 41138, and 41140 of the Revenue and Taxation Code.

SEC. 3. The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the Energy Resources Programs Account, General Fund to the State Energy Resources, Conservation and Development Commission, in augmentation of the appropriation made in Item 3360-001-0465, for the development and support of Consumers Electric Users Cooperatives. The commission may utilize these funds to hire staff and consultant support as it deems necessary.

SEC. 4. The sum of eight million two hundred eighty-nine thousand dollars ($8,289,000) is hereby appropriated for local assistance to the Department of Parks and Recreation, in augmentation of the appropriation made in Item 3790-102-0001, to be available for expenditure during the 1998–99, 1999–2000, and 2000–01 fiscal years and to be allocated as follows:

(a) Forty-five thousand dollars ($45,000) to the City of Anaheim: support for the Boys and Girls Club.

(b) One hundred twenty thousand dollars ($120,000) to the City of Cypress: completion of Roller Hockey Rink and Skateboard Park.

(c) Two hundred fifty thousand dollars ($250,000) to the City of Kerman for the Kerman Community Facility.

(d) Two hundred fifty thousand dollars ($250,000) to the City of San Jose for the Guadalupe River Parkway-South Trail Project.

(e) One hundred thirty-five thousand dollars ($135,000) to the City of San Diego: Sandburg Park Tot Lot Upgrade.

(f) Fifty-one thousand dollars ($51,000) to the County of San Diego: New Spring Valley Family Health Center.

(g) Two hundred thousand dollars ($200,000) to the City and County of San Francisco: Pine Lake Park.

(h) Sixty-five thousand dollars ($65,000) to the City of Tustin: reroofing of the Boys and Girls Club of Tustin.

(i) Two hundred thousand dollars ($200,000) to the County of Butte: Courthouse Remodel.

(j) Two hundred thousand dollars ($200,000) to the City of Lancaster: National Soccer Complex Restrooms.

(k) One hundred fifty thousand dollars ($150,000) to the City of Ontario: De Anza Park Restroom and Storage Facilities.

(*l*) One million dollars ($1,000,000) to the City of San Jose: Guadalupe River Parkway-South Trail Project.

(m) Four hundred thousand dollars ($400,000) to the City of San Jose: Mexican Cultural Heritage Garden and Plaza.

(n) Two hundred fifty thousand dollars ($250,000) to the City of Ontario: Local parks.

(o) Two hundred thousand dollars ($200,000) to the City of Rancho Cucamonga: Expansion of a senior center.

(p) One hundred fifteen thousand dollars ($115,000) to the City of Oceanside: Oceanside Boys and Girl's "Gangbusters" Program.

(q) One million dollars ($1,000,000) to the Town of Apple Valley for land acquisition and construction of the Lewis Center for Earth Science.

(r) Forty thousand dollars ($40,000) to the 50th Agricultural District: Facilities development.

(s) Fifty thousand dollars ($50,000) to the City of Riverbank: Community swimming pool.

(t) Ten thousand dollars ($10,000) to the City of Dos Palos: Community swimming pool.

(u) Ten thousand dollars ($10,000) to the City of Merced: Skateboard park.

(v) Ten thousand dollars ($10,000) to the City of Oakdale: Skateboard park.

(w) One hundred thousand dollars ($100,000) to City of Monterey: Acquisitions for the Window-on-the-Bay project.

(x) One hundred thousand dollars ($100,000) to the City of Westminster: Westminster Park and Community/Training Center.

(y) Fifty thousand dollars ($50,000) to the City of Gridley: Guardian Community Center.

(z) Fifty thousand dollars ($50,000) to the City of Redding: Redding Sports Complex.

(ax) Three hundred thirty thousand ($330,000) to the City of Los Angeles: Construction or rehabilitation of the Watts/Willowbrook Boys and Girls Club.

(bx) Two hundred thousand dollars ($200,000) to the Metropolitan Transit Authority: Landscaping the Chandler Boulevard Median in the Valley Village community of the City of Los Angeles.

(cx) Seventy thousand dollars ($70,000) to the La Mesa Commission on Aging: Additions to the La Mesa Community Center.

(dx) Fifty thousand dollars ($50,000) to the City of Lemon Grove: Construction of a Safe Route School Sidewalk Program.

(ex) Four hundred thousand dollars ($400,000) to the City of San Diego for local assistance for development of approximately five acres for new multi-purpose ball fields at the Bay Terraces Community Park.

(fx) Fifty-five thousand dollars ($55,000) to the City of Hemet: Development of a 100 acre park.

(gx) Fifteen thousand dollars ($15,000) to the City of Arroyo Grande for local assistance: Relocation of the Arroyo Grande School House, known as the Old Santa Manuela one-room school house.

(hx) Eleven thousand dollars ($11,000) to the City of Campbell: Hook-up station for electric cars.

(ix) One hundred thousand dollars ($100,000) to the City of San Jose: Park facilities.

(jx) Four hundred thousand dollars ($400,000) to the City of Los Angeles: Griffith Park Replumbing.

(kx) Five hundred thousand dollars ($500,000) to the City of San Fernando: Las Palmas Youth/Senior Center Demolition.

(*l*x) Three hundred fifty thousand dollars ($350,000) to the Mid-Peninsula Open Space District: Development of Mid-Peninsula Trail Easements.

(mx) Fifty thousand dollars ($50,000) to the City of Bellflower: Bellflower Recreational Park.

(nx) Two hundred fifty thousand dollars ($250,000) to the City of Glendale: College View School Park.

(ox) Ninety-two thousand dollars ($92,000) to the City of Healdsburg: Carson Warner Memorial Park.

(px) Two hundred fifty thousand dollars ($250,000) to the City of Willits: Willits soccer field.

(qx) One hundred fifteen thousand dollars ($115,000) to the City of San Diego: Lake Murray Community Park Comfort Station (park upgrades).

SEC. 5. The sum of one million seven hundred thousand dollars ($1,700,000) is hereby appropriated to the State Water Resources Control Board, in augmentation of the appropriation made in Item 3940-001-0001, to be apportioned as follows:

(a) One million two hundred thousand dollars ($1,200,000) to fund the City of San Diego Recycled Water for Industry Project to demonstrate that recycled waste water can be repurified sufficiently to be suitable for various industrial purposes.

(b) Two hundred fifty thousand dollars ($250,000) for a local assistance grant to the Resource Conservation District of Greater San Diego County to implement nonpoint source water pollution education project in San Diego County.

(c) Two hundred fifty thousand dollars ($250,000) for the development of a coastal nonpoint source water pollution control

program, in accordance with Senate Bill 1453 of the 1997–98 Regular Session.

SEC. 6. The sum of six hundred fifty thousand dollars ($650,000) is hereby appropriated for local assistance to the Office of Criminal Justice Planning, in augmentation of the appropriation made in Item 8100-101-0001, to be apportioned as follows:

(a) Five hundred thousand dollars ($500,000) to the City of San Diego to expand the CHOICE program.

(b) Fifty thousand dollars ($50,000) to the City of Bellflower to implement an early prevention program for at-risk youth.

(c) Fifty thousand dollars ($50,000) to the City of Downey Police Department to upgrade computers to implement Megan's Law and track gang activity.

(d) Fifty thousand dollars ($50,000) to the City of Long Beach Police Department for a command center for natural disasters and a mobile substation.

SEC. 7. (a) The sum of six hundred nineteen thousand dollars ($619,000) is hereby appropriated for capital outlay to the State Coastal Conservancy, in augmentation of the appropriation made in Item 3760-301-0001, to be apportioned as follows:

(1) Two hundred nineteen thousand dollars ($219,000) for Imperial Beach.

(2) Four hundred thousand dollars ($400,000) for Otay River park.

(b) The conservancy shall not enter into a grant contract with a nonprofit organization or local government for property acquisition which provides for either of the following: (a) a reversionary interest to the state, unless the grant contract specifies that the property shall not revert to the state without review and approval by the conservancy and the State Public Works Board; or (b) a state leasehold interest in property acquired by a nonstate public agency with conservancy grant funds, unless the lease terms are approved by the Director of General Services. Except to the extent above, the expenditures of funds for grants to public agencies and nonprofit organizations shall be exempt from review by the State Public Works Board.

(c) The amount appropriated by this item is available for encumbrance for either capital outlay or local assistance through fiscal year 2000–01.

(d) The funds appropriated by this section are available for activities consistent with Division 21 (commencing with Section 31000) of the Public Resources Code.

SEC. 8. The sum of seven hundred fifty thousand dollars ($750,000) is hereby appropriated to the Department of Toxic Substances Control, in augmentation of the appropriation made in Item 3960-001-0001, for clean-up of the Nipomo Oil Waste Site.

SEC. 8.5. The sum of two million dollars ($2,000,000) is hereby appropriated from the General Fund to the State Department of Mental Health for the Children's System of Care Program established

pursuant to Part 4 (commencing with Section 5850) of Division 5 of the Welfare and Institutions Code, in order to expand the program.

SEC. 9. The sum of nine hundred eighty thousand dollars ($980,000) is hereby appropriated for local assistance to the Department of Justice, in augmentation of the appropriation made in Item 0820-101-0001, to be apportioned as follows:

(a) Nine hundred thousand dollars ($900,000) to 50-Law Enforcement, for the Sexual Assault Felony Enforcement Task Force.

(b) Eighty thousand dollars ($80,000) to the Los Angeles Interagency Metropolitan Police Apprehension Crime Task Force for purchase of one anti-methamphetamine vehicle.

SEC. 10. The sum of twenty thousand dollars ($20,000) is hereby appropriated for local assistance to the Department of Toxic Substances Control, Program 12, in augmentation of the appropriation made in Item 3960-101-0001, for removal of hazardous electrical transformer from the playground at the Cogswell Elementary School, Mountain View School District.

SEC. 11. The sum of three hundred forty thousand dollars ($340,000) is hereby appropriated for capital outlay to the Department of Parks and Recreation, in augmentation of the appropriation made in Item 3790-302-0001, for Los Banos Creek Bridge minor project repair, San Luis Reservoir State Recreation Area.

SEC. 12. The following provision is hereby added to Item 2720-301-0001: Funds appropriated by this item shall be used for the development of working drawings for horse stables in Old Sacramento. The California Highway Patrol shall work in conjunction with the Old Sacramento Management Company in the development of working drawings.

SEC. 13. The sum of four hundred forty thousand dollars, ($440,000) is hereby appropriated for support of the California State University, in augmentation of the appropriation made in Item 6610-001-0001, to be apportioned as follows:

(a) Two hundred forty thousand dollars ($240,000) for development of a wireless multimedia communication system at the Pomona campus to serve as a model for commercial and private users.

(b) Two hundred thousand dollars ($200,000) to the California State University: Ruben S. Ayala Water Resources Institute, Pfau Library, CSU San Bernardino-equipment, materials, and other start-up costs.

SEC. 14. The sum of four hundred thousand dollars ($400,000) is hereby appropriated for local assistance to the California Tahoe Conservancy, in augmentation of the appropriation made in Item 3125-101-0001, for the construction of the Rocky Point bicycle and pedestrian trail.

SEC. 15. The sum of one million dollars ($1,000,000) is hereby appropriated for support of the State Energy Resources, Conservation, and Development Commission, in augmentation of the appropriation made in Item 3360-001-0001, for an Environmental, Energy, and Highway Research Test Track.

SEC. 16. The sum of two hundred thousand dollars ($200,000) is hereby appropriated for local assistance to the California Trade and Commerce Agency, in augmentation of the appropriation made in Item 2920-101-0001, for California base retention, High Desert Military Test Range, Edwards Air Force Base, Plant 42, China Lake Naval Air Warfare Center, and Point Mugu.

SEC. 17. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the General Fund to the Trade and Commerce Agency, to be allocated exclusively toward meeting the Manufacturing Technology Program (Article 4 (commencing with Section 15379.15) of Chapter 3.5 of Part 6.7 of Division 3 of Title 2 of the Government Code) matching fund requirements of the federal Manufacturing extension Partnership Program at the Northern California Center which is administered by the National Institute of Standards and Technology at the United States Department of Commerce.

SEC. 18. The sum of one million dollars ($1,000,000) is hereby appropriated for capital outlay, Department of Water Resources, in augmentation of the appropriation made in Item 3860-301-0001, for the Colusa Basin Drainage District, Flood Control Project.

SEC. 19. The sum of two hundred fifty thousand dollars ($250,000) is hereby appropriated for support of the California Conservation Corps, in augmentation of the appropriation made in Item 3340-001-0001, for acquisition and development of the San Francisco Bay Trail.

SEC. 20. The sum of one hundred thousand dollars ($100,000) is hereby appropriated for support of the State Department of Education for environmental educational program funding.

SEC. 21. The sum of two hundred twenty-five thousand dollars ($225,000) is hereby appropriated for local assistance to the Wildlife Conservation Board, in augmentation of the appropriation made in Item 3640-301-0001, to be apportioned as follows:

(a) One hundred thousand dollars ($100,000) to acquire the Sky Ranch.

(b) One hundred twenty-five thousand dollars ($125,000) to the City of Bakersfield for the Kern River Parkway.

SEC. 22. The sum of three hundred thousand dollars ($300,000) is hereby appropriated to the Pasadena Unified School District, for technology and technology related costs, collection development and coordination costs, and operational costs, associated with the Joint Use Library project.

SEC. 23. The sum of three hundred thousand dollars ($300,000) is hereby appropriated to the Temple City School District for

technology and technology related costs, collection development and coordination costs, and operational costs, associated with the Joint Use Library project.

SEC. 24. The sum of two hundred thousand dollars ($200,000) is hereby appropriated to the Employment Development Department for allocation to nonprofit foundations or other entities for the purpose of restoring baseball in the inner cities as part of a program for at-risk youths.

SEC. 25. The sum of three hundred thousand dollars ($300,000) is hereby appropriated to the State Department of Education for local assistance to the Los Angeles Unified School District for the following purposes:

(a) One hundred thousand dollars ($100,000) for a video teleconferencing pilot program in the Lincoln/Wilson Cluster of Schools.

(b) Two hundred thousand dollars ($200,000) to support implementation of a state-of-the-art educational facility housing a Technology Education (multimedia) facility including multimedia production training to be located at the former Lawry's California Center in Los Angeles.

SEC. 26. The sum of two hundred thousand dollars ($200,000) is hereby appropriated to the California State Library Program 20-Library Development Services-Public Library Foundation Program for local assistance to the City of Long Beach.

SEC. 27. The sum of fifty thousand dollars ($50,000) is hereby appropriated to the California State Library Program 20-Library Development Services-Public Library Foundation Program for local assistance to the City of Downey.

SEC. 28. Section 53 of Chapter 330 of the Statutes of 1998 is amended to read:

Sec. 53. The sum of three million two hundred seventy thousand dollars ($3,270,000) is reappropriated from the Proposition 98 Reversion Account to the Superintendent of Public Instruction in accordance with all of the following:

(a) Twenty thousand dollars ($20,000) for allocation on a one-time basis to the Pasadena Unified School for the purchase of textbooks for a tutoring program.

(b) Eighty thousand dollars ($80,000) for allocation on a one-time basis to the Santa Paula Unified School District for the purpose of renovating a swimming pool.

(c) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the Montebello Unified School District for the purpose of purchasing school security devices.

(e) One hundred eighty thousand dollars ($180,000) for allocation on a one-time basis to the Los Angeles County Office of Education for the purpose of developing middle school civic education curricula.

(g) Two hundred thousand dollars ($200,000) for allocation on a one-time basis to the Superintendent of Public Instruction, for allocation on a grant basis to local educational agencies for support of home economics careers programs, pursuant to legislation enacted in the 1997–98 Regular Session.

(j) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Lucia Mar School District for the purpose of constructing a performing arts center.

(k) Three hundred thousand dollars ($300,000) for allocation on a one-time basis to the Los Angeles Unified School District for the purpose of support of the California Arts Initiative.

(m) One million dollars ($1,000,000) for allocation on a one-time basis to the Superintendent of Public Instruction, for allocation on a grant basis to local educational agencies, for the purpose of high school coaching training, pursuant to legislation enacted in the 1997–98 Regular Session.

(n) Seven hundred thousand dollars ($700,000) for allocation on a one-time basis to the Los Alamitos Unified School District for the purpose of support of the Los Alamitos High School for the Arts.

(q) Ninety thousand dollars ($90,000) for allocation on a one-time basis to the Pasadena Unified School District for support of the Pasadena Youth Center.

(r) One hundred fifty thousand dollars ($150,000) for allocation on a one-time basis to the Temple City Unified School District for support of the Temple City Arts Academy.

SEC. 29. The sum of four hundred thousand dollars ($400,000) is hereby appropriated from the Proposition 98 Reversion Account to the Chancellor of the California Community Colleges for allocation to the Rancho Santiago Community College District for the IDEA Institute in Santa Ana.

SEC. 30. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make certain necessary augmentations to the appropriations made by the Budget Act of 1998 for support of state government for the 1998–99 fiscal year, it is necessary that this act take effect immediately.

CHAPTER 1051

An act making an appropriation in augmentation of the Budget Act of 1998, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

On this date I am signing Senate Bill No. 1574 with a reduction.

This bill would make an appropriation for nine dredging projects, the Simon Wiesenthal Center-Museum, "at-risk" youth employment training programs, and for local assistance to the Bay Area Rapid Transit District (BART).

I am sustaining $1,000 in Section (b) and $1,250,000 in Section (c).

I am deleting $15,700,000 in Section (a) and $475,000 in Section (d).

Notwithstanding the merits of the projects, it is more critical that the State have a two percent reserve.

PETE WILSON, Governor

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

SECTION 1. The sum of seventeen million four hundred twenty-six thousand dollars ($17,426,000) is hereby appropriated from the following sources for the following purposes:

(a) The sum of fifteen million seven hundred thousand dollars ($15,700,000) from the General Fund to the Department of Water Resources for local assistance, on a one-time basis, for all of the following dredging projects, in the following amounts:

(1)	Crescent City Harbor	$ 135,000
(2)	Humboldt Harbor and Bay	1,612,000
(3)	Los Angeles Harbor	7,016,000
(4)	Oakland Harbor	2,401,000
(5)	Port of Long Beach	1,612,000
(6)	Richmond Harbor	2,318,000
(7)	San Francisco Bay to Stockton	67,000
(8)	Santa Monica Breakwater	404,000
(9)	Silver Strand Shoreline/Imperial Beach	135,000

(b) The sum of one thousand dollars ($1,000) from the General Fund to the California Arts Council for local assistance to be allocated to the Simon Wiesenthal Center-Museum of Tolerance. No allocation shall be made until the Simon Wiesenthal Center notifies the California Arts Council in writing and warrants that all the following conditions have been met:

(1) The funding shall be used for the acquisition of a facility to conduct the activities of the Simon Wiesenthal Center, including

those activities funded by the appropriations in Items 8120-012-0268, 8120-101-0268, and 8260-102-0001 of Section 2.00 of the 1998 Budget Act (Ch. 324, Stats. 1998).

(2) The facility shall be owned and operated by the Simon Wiesenthal Center.

(3) The Simon Wiesenthal Center shall provide a match for the facility acquisition equal to the amount of funds provided from the amount allocated in this subdivision.

(c) The sum of one million two hundred fifty thousand dollars ($1,250,000) from the General Fund to the Employment Development Department to be allocated and disbursed by the department, as follows:

(1) The sum of five hundred thousand dollars ($500,000) to the administrative entity of the job training Service Delivery Area for the City of Los Angeles to support no more than four at-risk youth employment demonstration projects by private, nonprofit entities.

(2) The sum of one hundred fifty thousand dollars ($150,000) to each of the administrative entities of the job training Service Delivery Areas of the City of Oakland, the City and County of San Francisco, the City of Santa Ana, the County of Fresno, and the City and County of San Diego, jointly, to support in each of those jurisdictions no more than two at-risk youth employment demonstration projects by private, nonprofit entities.

(d) The sum of four hundred seventy-five thousand dollars ($475,000) from the Public Transportation Account to the Department of Transportation for allocation for local assistance to the Bay Area Rapid Transit District.

SEC. 2. This act make an appropriation in augmentation of the appropriations made in the Budget Act of 1998 (Ch. 324, Stats. 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:

In order to implement the Budget Act of 1998, it is necessary that this act go into immediate effect.

CHAPTER 1052

An act to amend Sections 2, 7710, 7881, 8140, 8842, 9027, 9027.5, and 9029.5, to amend the heading of Part 1.5 (commencing with Section 7000) of Division 6 of, to add Sections 105 and 9001.7 to, to add a division and chapter heading immediately preceding Section 1 of, to add Chapter 2 (commencing with Section 90) to Division 0.5 of, to add Part 1.7 (commencing with Section 7050) to Division 6 of, Article 17 (commencing with Section 8585) to Chapter 2 of Part 3 of, Division 6 of, to repeal Section 1701 of, and to repeal and add Section 7710.1

of, the Fish and Game Code, and to add Section 11125.6 to the Government Code, relating to marine life, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 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 Marine Life Management Act of 1998.

SEC. 2. A division heading is added immediately preceding Section 1 of the Fish and Game Code, to read:

DIVISION 0.5. GENERAL PROVISIONS AND DEFINITIONS

SEC. 2.5. A chapter heading is added immediately preceding Section 1 of the Fish and Game Code, to read:

CHAPTER 1. GENERAL DEFINITIONS

SEC. 3. Section 2 of the Fish and Game Code is amended to read:

2. Unless the provisions or the context otherwise requires, the definitions in this chapter govern the construction of this code and all regulations adopted under this code.

SEC. 4. Chapter 2 (commencing with Section 90) is added to Division 0.5 of the Fish and Game Code, to read:

CHAPTER 2. MARINE LIFE DEFINITIONS

90. The definitions in this chapter govern the construction of Chapter 7 (commencing with Section 1700) of Division 2 and Division 6 (commencing with Section 5500) and all regulations adopted pursuant to those provisions.

90.1. "Adaptive management," in regard to a marine fishery, means a scientific policy that seeks to improve management of biological resources, particularly in areas of scientific uncertainty, by viewing program actions as tools for learning. Actions shall be designed so that even if they fail, they will provide useful information for future actions. Monitoring and evaluation shall be emphasized so that the interaction of different elements within the system can be better understood.

90.5. "Bycatch" means fish or other marine life that are taken in a fishery but which are not the target of the fishery. "Bycatch" includes discards.

90.7. "Depressed," with regard to a marine fishery, means the condition of a fishery for which the best available scientific information, and other relevant information that the commission or

department possesses or receives, indicates a declining population trend has occurred over a period of time appropriate to that fishery. With regard to fisheries for which management is based on maximum sustainable yield, or in which a natural mortality rate is available, "depressed" means the condition of a fishery that exhibits declining fish population abundance levels below those consistent with maximum sustainable yield.

91. "Discards" means fish that are taken in a fishery but are not retained because they are of an undesirable species, size, sex, or quality, or because they are required by law not to be retained.

93. "Essential fishery information," with regard to a marine fishery, means information about fish life history and habitat requirements; the status and trends of fish populations, fishing effort, and catch levels; fishery effects on fish age structure and on other marine living resources and users, and any other information related to the biology of a fish species or to taking in the fishery that is necessary to permit fisheries to be managed according to the requirements of this code.

94. "Fishery" means either of the following:

(a) One or more populations of marine fish or marine plants that may be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics.

(b) Fishing for or harvesting of the populations described in (a).

96. "Marine living resources" includes all wild mammals, birds, reptiles, fish, and plants that normally occur in or are associated with salt water, and the marine habitats upon which these animals and plants depend for their continued viability.

96.5. "Maximum sustainable yield" in a marine fishery means the highest average yield over time that does not result in a continuing reduction in stock abundance, taking into account fluctuations in abundance and environmental variability.

97. "Optimum yield," with regard to a marine fishery, means the amount of fish taken in a fishery that does all of the following:

(a) Provides the greatest overall benefit to the people of California, particularly with respect to food production and recreational opportunities, and takes into account the protection of marine ecosystems.

(b) Is the maximum sustainable yield of the fishery, as reduced by relevant economic, social, or ecological factors.

(c) In the case of an overfished fishery, provides for rebuilding to a level consistent with producing maximum sustainable yield in the fishery.

97.5. "Overfished," with regard to a marine fishery, means both of the following:

(a) A depressed fishery.

(b) A reduction of take in the fishery is the principal means for rebuilding the population.

98. "Overfishing" means a rate or level of taking that the best available scientific information, and other relevant information that the commission or department possesses or receives, indicates is not sustainable or that jeopardizes the capacity of a marine fishery to produce the maximum sustainable yield on a continuing basis.

98.2. "Participants" in regard to a fishery means the sportfishing, commercial fishing, and fish receiving and processing sectors of the fishery.

98.5. "Population" or "stock" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

99. "Restricted access," with regard to a marine fishery, means a fishery in which the number of persons who may participate, or the number of vessels that may be used in taking a specified species of fish, is limited by statute or regulation.

99.5. "Sustainable," "sustainable use," and "sustainability," with regard to a marine fishery, mean both of the following:

(a) Continuous replacement of resources, taking into account fluctuations in abundance and environmental variability.

(b) Securing the fullest possible range of present and long-term economic, social, and ecological benefits, maintaining biological diversity, and, in the case of fishery management based on maximum sustainable yield, taking in a fishery that does not exceed optimum yield.

SEC. 5. Section 105 is added to the Fish and Game Code, to read:

105. The commission shall form a marine resources committee consisting of at least one commissioner. The committee shall report to the commission from time to time on its activities and shall make recommendations on all marine resource matters considered by the commission. The committee or its designee shall, to the extent practicable, attend meetings of the department staff, including meetings of the department staff with interested parties, in which significant marine living resource management documents are being developed.

SEC. 6. Section 1701 of the Fish and Game Code is repealed.

SEC. 7. The heading of Part 1.5 (commencing with Section 7000) of Division 6 of the Fish and Game Code is amended to read:

PART 1.5. WHITE SEABASS FISHERY MANAGEMENT PLAN

SEC. 8. Part 1.7 (commencing with Section 7050) is added to Division 6 of the Fish and Game Code, to read:

PART 1.7. CONSERVATION AND MANAGEMENT OF MARINE LIVING RESOURCES

CHAPTER 1. GENERAL POLICIES

7050. (a) The Legislature finds and declares that the Pacific Ocean and its rich marine living resources are of great environmental, economic, aesthetic, recreational, educational, scientific, nutritional, social, and historic importance to the people of California.

(b) It is the policy of the state to ensure the conservation, sustainable use, and, where feasible, restoration of California's marine living resources for the benefit of all the citizens of the state. The objective of this policy shall be to accomplish all of the following:

(1) Conserve the health and diversity of marine ecosystems and marine living resources.

(2) Allow and encourage only those activities and uses of marine living resources that are sustainable.

(3) Recognize the importance of the aesthetic, educational, scientific, and recreational uses that do not involve the taking of California's marine living resources.

(4) Recognize the importance to the economy and the culture of California of sustainable sport and commercial fisheries and the development of commercial aquaculture consistent with the marine living resource conservation policies of this part.

(5) Support and promote scientific research on marine ecosystems and their components to develop better information on which to base marine living resource management decisions.

(6) Manage marine living resources on the basis of the best available scientific information and other relevant information that the commission or department possesses or receives.

(7) Involve all interested parties, including, but not limited to, individuals from the sport and commercial fishing industries, aquaculture industries, coastal and ocean tourism and recreation industries, marine conservation organizations, local governments, marine scientists, and the public in marine living resource management decisions.

(8) Promote the dissemination of accurate information concerning the condition of, or management of, marine resources and fisheries by seeking out the best available information and making it available to the public through the marine resources management process.

(9) Coordinate and cooperate with adjacent states, as well as with Mexico and Canada, and encourage regional approaches to management of activities and uses that affect marine living resources. Particular attention shall be paid to coordinated approaches to the management of shared fisheries.

7051. (a) A regulation adopted pursuant to this part shall apply only to ocean waters and bays. Notwithstanding any other provision of this part, nothing contained in this part grants the department or any other agency of the state any regulatory authority not in existence on January 1, 1999, in any river upstream of the mouth of such river, in the Sacramento-San Joaquin Delta or in any other estuary.

(b) The policies in this part shall apply only to fishery management plans and regulations adopted by the commission on or after January 1, 1999. No power is delegated to the commission or the department by this part to regulate fisheries other than the nearshore fishery, the white sea bass fishery, emerging fisheries, and fisheries for which the commission or department had regulatory authority prior to January 1, 1999.

CHAPTER 2. MARINE FISHERIES GENERALLY

7055. The Legislature finds and declares that it is the policy of the state that:

(a) California's marine sport and commercial fisheries, and the resources upon which they depend, are important to the people of the state and, to the extent practicable, shall be managed in accordance with the policies and other requirements of this part in order to assure the long-term economic, recreational, ecological, cultural, and social benefits of those fisheries and the marine habitats on which they depend.

(b) Programs for the conservation and management of the marine fishery resources of California shall be established and administered to prevent overfishing, to rebuild depressed stocks, to ensure conservation, to facilitate long-term protection and, where feasible, restoration of marine fishery habitats, and to achieve the sustainable use of the state's fishery resources.

(c) Where a species is the object of sportfishing, a sufficient resource shall be maintained to support a reasonable sport use, taking into consideration the necessity of regulating individual sport fishery bag limits to the quantity that is sufficient to provide a satisfying sport.

(d) The growth of commercial fisheries, including distant-water fisheries, shall be encouraged.

7056. In order to achieve the primary fishery management goal of sustainability, every sport and commercial marine fishery under the jurisdiction of the state shall be managed under a system whose objectives include all of the following:

(a) The fishery is conducted sustainably so that long-term health of the resource is not sacrificed in favor of short-term benefits. In the case of a fishery managed on the basis of maximum sustainable yield, management shall have optimum yield as its objective.

(b) The health of marine fishery habitat is maintained and, to the extent feasible, habitat is restored, and where appropriate, habitat is enhanced.

(c) Depressed fisheries are rebuilt to the highest sustainable yields consistent with environmental and habitat conditions.

(d) The fishery limits bycatch to acceptable types and amounts, as determined for each fishery.

(e) The fishery management system allows fishery participants to propose methods to prevent or reduce excess effort in marine fisheries.

(f) Management of a species that is the target of both sport and commercial fisheries or of a fishery that employs different gears is closely coordinated.

(g) Fishery management decisions are adaptive and are based on the best available scientific information and other relevant information that the commission or department possesses or receives, and the commission and department have available to them essential fishery information on which to base their decisions.

(h) The management decisionmaking process is open and seeks the advice and assistance of interested parties so as to consider relevant information, including local knowledge.

(i) The fishery management system observes the long-term interests of people dependent on fishing for food, livelihood, or recreation.

(j) The adverse impacts of fishery management on small-scale fisheries, coastal communities, and local economies are minimized.

(k) Collaborative and cooperative approaches to management, involving fishery participants, marine scientists, and other interested parties are strongly encouraged, and appropriate mechanisms are in place to resolve disputes such as access, allocation, and gear conflicts.

(*l*) The management system is proactive and responds quickly to changing environmental conditions and market or other socioeconomic factors and to the concerns of fishery participants.

(m) The management system is periodically reviewed for effectiveness in achieving sustainability goals and for fairness and reasonableness in its interaction with people affected by management.

7058. Any fishery management regulation adopted pursuant to this part shall, to the extent practicable, conform to the policies of Sections 7055 and 7056.

7059. (a) The Legislature finds and declares all of the following:

(1) Successful fishery management is a collaborative process that requires a high degree of ongoing communication and participation of all those involved in the management process, particularly the commission, the department, and those who represent the people and resources that will be most affected by fishery management decisions, especially fishery participants and other interested parties.

(2) In order to maximize the marine science expertise applied to the complex issues of fishery management, the commission and the department are encouraged to continue to, and to find creative new ways to, contract with or otherwise effectively involve Sea Grant staff, marine scientists, economists, collaborative factfinding process and dispute resolution specialists, and others with the necessary expertise at colleges, universities, private institutions, and other agencies.

(3) The benefits of the collaborative process required by this section apply to most fishery management activities including, but not limited to, the development and implementation of research plans, fishery management plans, and plan amendments, and the preparation of fishery status reports such as those required by Section 7065.

(4) Because California is a large state with a long coast, and because travel is time consuming and costly, the involvement of interested parties shall be facilitated, to the extent practicable, by conducting meetings and discussions in the areas of the coast and in ports where those most affected are concentrated.

(b) In order to fulfill the intent of subdivision (a), the commission and the department shall do all of the following:

(1) Periodically review fishery management operations with a view to improving communication, collaboration, and dispute resolution, seeking advice from interested parties as part of the review.

(2) Develop a process for the involvement of interested parties and for factfinding and dispute resolution processes appropriate to each element in the fishery management process. Models to consider include, but are not limited to, the take reduction teams authorized under the Marine Mammal Protection Act (16 U.S.C.A. Sec. 1361 et seq.) and the processes that led to improved management in the California herring, sea urchin, prawn, angel shark, and white seabass fisheries.

(3) Consider the appropriateness of various forms of fisheries comanagement, which involves close cooperation between the department and fishery participants, when developing fishery management plans.

(4) When involving fishery participants in the management process, give particular consideration to the gear used, involvement of sport or commercial sectors or both sectors, and the areas of the coast where the fishery is conducted in order to ensure adequate involvement.

CHAPTER 3. FISHERIES SCIENCE

7060. (a) The Legislature finds and declares that for the purposes of sustainable fishery management and this part, essential fishery information is necessary for federally and state-managed

marine fisheries important to the people of this state to provide sustainable economic and recreational benefits to the people of California. The Legislature further finds and declares that acquiring essential fishery information can best be accomplished through the ongoing cooperation and collaboration of participants in fisheries.

(b) The department, to the extent feasible, shall conduct and support research to obtain essential fishery information for all marine fisheries managed by the state.

(c) The department, to the maximum extent practicable and consistent with Section 7059, shall encourage the participation of fishermen in fisheries research within a framework that ensures the objective collection and analysis of data, the collaboration of fishermen in research design, and the cooperation of fishermen in carrying out research.

(d) The department may apply for grants to conduct research and may enter into contracts or issue competitive grants to public or private research institutions to conduct research.

7062. (a) The department shall establish a program for external peer review of the scientific basis of marine living resources management documents. The department, in its discretion and unless otherwise required by this part, may submit to peer review, documents that include, but are not limited to, fishery management plans and plan amendments, marine resource and fishery research plans.

(b) The department may enter into an agreement with one or more outside entities that are significantly involved with researching and understanding marine fisheries and are not advocacy organizations. These entities may include, but not be limited to, the Sea Grant program of any state, the University of California, the California State University, the Pacific States Marine Fisheries Commission, or any other entity approved by the commission to select and administer peer review panels, as needed. The peer review panels shall be composed of individuals with technical expertise specific to the document to be reviewed. The entity with which the department enters into an agreement for a peer review shall be responsible for the scientific integrity of the peer review process. Each peer reviewer may be compensated as needed to ensure competent peer review. Peer reviewers shall not be employees or officers of the department or the commission and shall not have participated in the development of the document to be reviewed.

(c) The external peer review entity, within the timeframe and budget agreed upon by the department and the external scientific peer review entity, shall provide the department with the written report of the peer review panel that contains an evaluation of the scientific basis of the document. If the report finds that the department has failed to demonstrate that a scientific portion of the document is based on sound scientific knowledge, methods, and

practices, the report shall state that finding, and the reasons for the finding. The department may accept the finding, in whole or in part, and may revise the scientific portions of the document accordingly. If the department disagrees with any aspect of the finding of the external scientific peer review, it shall explain, and include as part of the record, its basis for arriving at such a determination in the analysis prepared for the adoption of the final document, including the reasons why it has determined that the scientific portions of the document are based on sound scientific knowledge, methods, or practice. The department shall submit the external scientific peer review report to the commission with any peer reviewed document that is to be adopted or approved by the commission.

(d) The requirements of this section do not apply to any emergency regulation adopted pursuant to subdivision (b) of Section 11346.1 of the Government Code.

(e) Nothing is this section shall be interpreted, in any way, to limit the authority of the commission or department to adopt a plan or regulation.

CHAPTER 4. COMMISSION AND DEPARTMENT

7065. (a) The director shall report annually in writing to the commission on the status of sport and commercial marine fisheries managed by the state. The date of the report shall be chosen by the commission with the advice of the department. Each annual report shall cover at least one-fourth of the marine fisheries managed by the state so that every fishery will be reported on at least once every four years. The department shall, consistent with Section 7059, involve expertise from outside the department in compiling information for the report, which may include, but not be limited to, Sea Grant staff, other marine scientists, fishery participants, and other interested parties.

(b) For each fishery reported on in an annual report, the report shall include information on landings, fishing effort, areas where the fishery occurs, and other factors affecting the fishery as determined by the department and the commission.

(c) Notwithstanding subdivision (a), the first annual report shall be presented to the commission on or before September 1, 2001, and shall cover all the marine fisheries managed by the state. To the extent that the requirements of this section and Section 7073 are duplicative, the first annual report may be combined with the plan required pursuant to Section 7073.

7066. (a) The Legislature finds and declares that a number of human-caused and natural factors can affect the health of marine fishery resources and result in marine fisheries that do not meet the policies and other requirements of this part.

(b) To the extent feasible, the director's report to the commission pursuant to Section 7065 shall identify any marine fishery that does

not meet the sustainability policies of this part. In the case of a fishery identified as being depressed, the report shall indicate the causes of the depressed condition of the fishery, describe steps being taken to rebuild the fishery, and, to the extent practicable, recommend additional steps to rebuild the fishery.

(c) The director's report to the commission pursuant to Section 7065, consistent with subdivision (n) of Section 7056, shall evaluate the management system and may recommend modifications of that system to the commission.

CHAPTER 5. FISHERY MANAGEMENT PLANS—GENERAL POLICIES

7070. The Legislature finds and declares that the critical need to conserve, utilize, and manage the state's marine fish resources and to meet the policies and other requirements stated in this part require that the state's fisheries be managed by means of fishery management plans.

7071. (a) Sections 7070 to 7088, inclusive, do not apply to the white seabass fishery.

(b) Part 1.5 (commencing with Section 7000) does not apply to any fishery other than to the white seabass fishery.

(c) Any fishery management plan adopted on or before January 1, 1999, pursuant to Part 1.5 (commencing with Section 7000) shall remain in effect until amended pursuant to Part 1.5 or this part.

Notwithstanding paragraph (2) of subdivision (b) of Section 7073, any fishery management plan adopted pursuant to Part 1.5 (commencing with Section 7000) and in existence on January 1, 1999, shall be amended to comply with this part on or before January 1, 2002.

7072. (a) Fishery management plans shall form the primary basis for managing California's sport and commercial marine fisheries.

(b) Fishery management plans shall be based on the best scientific information that is available, on other relevant information that the department possesses, or on such scientific information or other relevant information that can be obtained without substantially delaying the preparation of the plan, based on the schedule developed pursuant to paragraph (5) of subdivision (b) of Section 7073.

(c) To the extent that conservation and management measures in a fishery management plan either increase or restrict the overall harvest in a fishery, fishery management plans shall allocate those increases or restrictions fairly among recreational and commercial sectors participating in the fishery.

(d) The commission shall adopt a fishery management plan for the nearshore fishery on or before January 1, 2002, if funds are appropriated for that purpose in the annual budget act or pursuant to any other law.

7073. (a) On or before September 1, 2001, the department shall submit to the commission for its approval, a master plan that specifies the process and the resources needed to prepare, adopt, and implement fishery management plans for sport and commercial marine fisheries managed by the state. Consistent with Section 7059, the master plan shall be prepared with the advice, assistance, and involvement of participants in the various fisheries and their representatives, marine conservationists, marine scientists, and other interested persons.

(b) The master plan shall include all of the following:

(1) A list identifying the fisheries managed by the state, with individual fisheries assigned to fishery management plans as determined by the department according to conservation and management needs and consistent with subdivision (g) of Section 7056.

(2) A priority list for preparation of fishery management plans. Highest priority shall be given to fisheries that the department determines have the greatest need for changes in conservation and management measures in order to comply with the policies and requirements set forth in this part. Fisheries for which the department determines that current management complies with the policies and requirements of this part shall be given the lowest priority.

(3) A description of the research, monitoring, and data collection activities that the department conducts for marine fisheries and of any additional activities that might be needed for the department to acquire essential fishery information, with emphasis on the higher priority fisheries identified pursuant to paragraph (2).

(4) A process consistent with Section 7059 that ensures the opportunity for meaningful involvement in the development of fishery management plans and research plan by fishery participants and their representatives, marine scientists, and other interested parties.

(5) A process for periodic review and amendment of the master plan.

(c) The commission shall adopt or reject the master plan or master plan amendment, in whole or in part, after a public hearing. If the commission rejects a part of the master plan or master plan amendment, the commission shall return that part to the department for revision and resubmission pursuant to the revision and resubmission procedures for fishery management plans as described in subdivision (a) of Section 7075.

7074. (a) The department shall prepare interim fishery research protocols for at least the three highest priority fisheries identified pursuant to paragraph (4) of subdivision (b) of Section 7073. An interim fishery protocol shall be used by the department until a fishery management plan is implemented for that fishery.

(b) Consistent with Section 7059, each protocol shall be prepared with the advice, assistance, and involvement of participants in the various fisheries and their representatives, marine conservationists, marine scientists, and other interested persons.

(c) Interim protocols shall be submitted to peer review as described in Section 7062 unless the department, pursuant to subdivision (e), determines that peer review of the interim protocol is not justified. For the purpose of peer review, interim protocols may be combined in the following circumstances:

(1) For related fisheries.

(2) For two or more interim protocols that the commission determines will require the same peer review expertise.

(d) The commission, with the advice of the department, shall adopt criteria to be applied in determining whether an interim protocol may be exempted from peer review.

CHAPTER 6. FISHERY MANAGEMENT PLAN PREPARATION, APPROVAL, AND REGULATIONS

7075. (a) The department shall prepare fishery management plans and plan amendments, including any proposed regulations necessary to implement plans or plan amendments, to be submitted to the commission for adoption or rejection. Prior to submitting a plan or plan amendment, including any proposed regulations necessary for implementation, to the commission, the department shall submit the plan to peer review pursuant to Section 7062, unless the department determines that peer review of the plan or plan amendment may be exempted pursuant to subdivision (c). If the department makes that determination, it shall submit its reasons for that determination to the commission with the plan. If the commission rejects a plan or plan amendment, including proposed regulations necessary for implementation, the commission shall return the plan or plan amendment to the department for revision and resubmission together with a written statement of reasons for the rejection. The department shall revise and resubmit the plan or plan amendment to the commission within 90 days of the rejection. The revised plan or plan amendment shall be subject to the review and adoption requirements of this chapter.

(b) The department may contract with qualified individuals or organizations to assist in the preparation of fishery management plans or plan amendments.

(c) The commission, with the advice of the department and consistent with Section 7059, shall adopt criteria to be applied in determining whether a plan or plan amendment may be exempted from peer review.

(d) Fishery participants and their representatives, fishery scientists, or other interested parties may propose plan provisions or plan amendments to the department or commission. The

commission shall review any proposal submitted to the commission and may recommend to the department that the department develop a fishery management plan or plan amendment to incorporate the proposal.

7076. (a) To the extent practicable, and consistent with Section 7059, the department shall seek advice and assistance in developing a fishery management plan from participants in the affected fishery, marine scientists, and other interested parties. The department shall also seek the advice and assistance of other persons or entities that it deems appropriate, which may include, but is not limited to, Sea Grant, the National Marine Fisheries Service, the Pacific States Marine Fisheries Commission, the Pacific Fishery Management Council, and any advisory committee of the department.

(b) In the case of a fishery management plan or a plan amendment that is submitted to peer review, the department shall provide the peer review panel with any written comments on the plan or plan amendment that the department has received from fishery participants and other interested parties.

7077. A fishery management plan or plan amendment, or proposed regulations necessary for implementation of a plan or plan amendment, developed by the department shall be available to the public for review at least 30 days prior to a hearing on the management plan or plan amendment by the commission. Persons requesting to be notified of the availability of the plan shall be notified in sufficient time to allow them to review and submit comments at or prior to a hearing. Proposed plans and plan amendments and hearing schedules and agendas shall be posted on the department's Internet website.

7078. (a) The commission shall hold at least two public hearings on a fishery management plan or plan amendment prior to the commission's adoption or rejection of the plan.

(b) The plan or plan amendment shall be heard not later than 60 days following receipt of the plan or plan amendment by the commission. The commission may adopt the plan or plan amendment at the second public hearing, at the commission's meeting following the second public hearing, or at any duly noticed subsequent meeting, subject to subdivision (c).

(c) When scheduling the location of a hearing or meeting relating to a fishery management plan or plan amendment, the commission shall consider factors, including, among other factors, the area of the state, if any, where participants in the fishery are concentrated.

(d) Notwithstanding Section 7550.5 of the Government Code, prior to the adoption of a fishery management plan or plan amendment that would make inoperative a statute, the commission shall provide a copy of the plan or plan amendment to the Legislature for review by the Joint Committee on Fisheries and Aquaculture or, if there is no such committee, to the appropriate policy committee in each house of the Legislature.

(e) The commission shall adopt any regulations necessary to implement a fishery plan or plan amendment no more than 60 days following adoption of the plan or plan amendment. All implementing regulations adopted under this subdivision shall be adopted as a regulation pursuant to the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The commission's adoption of regulations to implement a fishery management plan or plan amendment shall not trigger an additional review process under the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(f) Regulations adopted by the commission to implement a plan or plan amendment shall specify any statute or regulation of the commission that is to become inoperative as to the particular fishery. The list shall designate each statute or regulation by individual section number, rather than by reference to articles or chapters.

CHAPTER 7. CONTENTS OF FISHERY MANAGEMENT PLANS

7080. Consistent with subdivision (b) of Section 7072, each fishery management plan prepared by the department shall summarize readily available information about the fishery including, but not limited to, all of the following:

(a) The species of fish and their location, number of vessels and participants involved, fishing effort, historical landings in the sport and commercial sectors, and a history of conservation and management measures affecting the fishery.

(b) The natural history and population dynamics of the target species and the effects of changing oceanic conditions on the target species.

(c) The habitat for the fishery and known threats to the habitat.

(d) The ecosystem role of the target species and the relationship of the fishery to the ecosystem role of the target species.

(e) Economic and social factors related to the fishery.

7081. Consistent with subdivision (b) of Section 7072, each fishery management plan or plan amendment prepared by the department shall include a fishery research protocol that does all of the following:

(a) Describe past and ongoing monitoring of the fishery.

(b) Identify essential fishery information for the fishery, including, but not limited to, age and growth, minimum size at maturity, spawning season, age structure of the population, and, if essential fishery information is lacking, identify the additional information needed and the resources and time necessary to acquire the information.

(c) Indicate the steps the department shall take to monitor the fishery and to obtain essential fishery information, including the data collection and research methodologies, on an ongoing basis.

7082. Each fishery management plan or plan amendment prepared by the department shall contain the measures necessary and appropriate for the conservation and management of the fishery according to the policies and other requirements in this part. The measures may include, but are not limited to, all of the following:

(a) Limitations on the fishery based on area, time, amount of catch, species, size, sex, type or amount of gear, or other factors.

(b) Creation or modification of a restricted access fishery that contributes to a more orderly and sustainable fishery.

(c) A procedure to establish and to periodically review and revise a catch quota in any fishery for which there is a catch quota.

(d) Requirement for a personal, gear, or vessel permit and reasonable fees.

7083. (a) Each fishery management plan prepared by the department shall incorporate the existing conservation and management measures provided in this code that are determined by the department to result in a sustainable fishery.

(b) If additional conservation and management measures are included in the plan, the department shall, consistent with subdivision (b) of Section 7072, summarize anticipated effects of those measures on relevant fish populations and habitats, on fishery participants, and on coastal communities and businesses that rely on the fishery.

7084. (a) Consistent with subdivision (b) of Section 7072, each fishery management plan or plan amendment prepared by the department for a fishery that the department has determined has adverse effects on marine fishery habitat shall include measures that, to the extent practicable, minimize adverse effects on habitat caused by fishing.

(b) Subdivision (a) does not apply to activities regulated by Chapter 6 (commencing with Section 6650) of Part 1.

7085. Consistent with subdivision (b) of Section 7072, each fishery management plan or plan amendment prepared by the department, in fisheries in which bycatch occurs, shall include all of the following:

(a) Information on the amount and type of bycatch.

(b) Analysis of the amount and type of bycatch based on the following criteria:

(1) Legality of the bycatch under any relevant law.

(2) Degree of threat to the sustainability of the bycatch species.

(3) Impacts on fisheries that target the bycatch species.

(4) Ecosystem impacts.

(c) In the case of unacceptable amounts or types of bycatch, conservation and management measures that, in the following priority, do the following:

(1) Minimize bycatch.

(2) Minimize mortality of discards that cannot be avoided.

7086. (a) Consistent with subdivision (b) of Section 7072, each fishery management plan or plan amendment prepared by the

department shall specify criteria for identifying when the fishery is overfished.

(b) In the case of a fishery management plan for a fishery that has been determined to be overfished or in which overfishing is occurring, the fishery management plan shall contain measures to prevent, end, or otherwise appropriately address overfishing and to rebuild the fishery.

(c) Any fishery management plan, plan amendment, or regulation prepared pursuant to subdivision (b), shall do both of the following:

(1) Specify a time period for preventing or ending or otherwise appropriately addressing overfishing and rebuilding the fishery that shall be as short as possible, and shall not exceed 10 years except in cases where the biology of the population of fish or other environmental conditions dictate otherwise.

(2) Allocate both overfishing restrictions and recovery benefits fairly and equitably among sectors of the fishery.

7087. (a) Each fishery management plan prepared by the department shall include a procedure for review and amendment of the plan, as necessary.

(b) Each fishery management plan or plan amendment prepared by the department shall specify the types of regulations that the department may adopt without a plan amendment.

7088. Each fishery management plan and plan amendment shall include a list of any statutes and regulations that shall become inoperative, as to the particular fishery covered by the fishery management plan or plan amendment, upon the commission's adoption of implementing regulations for that fishery management plan or plan amendment.

CHAPTER 8. NEW OR DEVELOPING FISHERIES

7090. (a) The Legislature finds and declares that a proactive approach to management of emerging fisheries will foster a healthy marine environment and will benefit both commercial and sport fisheries and other marine-dependent activities. It is therefore the intent of the Legislature that the commission, upon recommendation of the department, shall have the authority to encourage, manage, and regulate emerging fisheries consistent with the policies of this part.

(b) "Emerging fishery," in regard to a marine fishery, means both of the following:

(1) A fishery that the director has determined is an emerging fishery, based on criteria that are approved by the commission and are related to a trend of increased landings or participants in the fishery and the degree of existing regulation of the fishery.

(2) A fishery that is not an established fishery. "Established fishery," in regard to a marine fishery, means, prior to January 1, 1999, one or more of the following:

(A) A restricted access fishery has been established in this code or in regulations adopted by the commission.

(B) A fishery, for which a federal fishery management plan exists, and in which the catch is limited within a designated time period.

(C) A fishery for which a population estimate and catch quota is established annually.

(D) A fishery for which regulations for the fishery are considered at least biennially by the commission.

(E) A fishery for which this code or regulations adopted by the commission prescribes at least two management measures developed for the purpose of sustaining the fishery. Management measures include minimum or maximum size limits, seasons, time, gear, area restriction, and prohibition on sale or possession of fish.

(c) The department shall closely monitor landings and other factors it deems relevant in each emerging fishery and shall notify the commission of the existence of an emerging fishery.

(d) The commission, upon the recommendation of the department, may do either, or both, of the following:

(1) Adopt regulations that limit taking in the fishery by means that may include, but not be limited to, restricting landings, time, area, gear, or access. These regulations may remain in effect until a fishery management plan is adopted or for 12 months, whichever is shorter.

(2) Direct the department to prepare a fishery management plan for the fishery and regulations necessary to implement the plan.

(e) A fishery management plan for an emerging fishery shall comply with the requirements for preparing and adopting fishery management plans contained in this part. In addition to those requirements, to allow for adequate evaluation of the fishery and the acquisition of essential fishery information, the fishery management plan shall provide an evaluation period, which shall not exceed three years unless extended by the commission. During the evaluation period, the plan shall do both of the following:

(1) In order to prevent excess fishing effort during the evaluation period, limit taking in the fishery by means that may include, but not be limited to, restricting landings, time, area, gear, or access to a level that the department determines is necessary for evaluation of the fishery.

(2) Contain a research plan that includes objectives for evaluating the fishery, a description of the methods and data collection techniques for evaluating the fishery, and a timetable for completing the evaluation.

(f) The commission is authorized to impose a fee on an emerging fishery in order to pay the costs of implementing this chapter. Such fees may include, but not be limited to, ocean fishing stamps and permit fees. Such fees may not be levied in excess of the necessary

costs to implement and administer this chapter. The commission may reduce fees annually if it determines that sufficient revenues exist to cover costs incurred by the department in administering this chapter. The commission and the department, with the advice of fishery participants and other interested parties, shall consider alternative ways to fund the evaluation of emerging fisheries.

(g) An emerging fishery is subject to this section unless the department incorporates the fishery into a fishery management plan developed under Sections 7070 to 7088, inclusive.

(h) In the event that this section is found to conflict with Section 8606, 8614, or 8615, this section shall prevail.

SEC. 9. Section 7710 of the Fish and Game Code is amended to read:

7710. (a) If the director determines, based on the best available scientific information, on other relevant information that the director possesses or receives, and on at least one public hearing in the area of the fishery, that taking in a fishery is being conducted in a manner that is not sustainable, the director may order the closure of any waters or otherwise restrict the taking under a fishing license in state waters of that species. Any closure or restriction order shall be adopted by emergency regulation in accordance with Chapter 3.5 (commencing with Section 11340), Division 3, Title 2 of the Government Code.

(b) The director shall bring to the attention of the commission within seven working days any regulations adopted pursuant to this section. Any regulations shall be effective for only 30 days unless the commission extends the closure or restriction under the authority granted to the commission in Section 7068.

(c) The department shall give notice of any hearing to be held pursuant to this section to the commission and its marine resources committee as far in advance of the hearing date as possible.

Nothing in this section or Section 7710.5 restricts any existing jurisdiction of the department with regard to the regulation of fisheries on the high seas.

SEC. 10. Section 7710.1 of the Fish and Game Code is repealed.

SEC. 11. Section 7710.1 is added to the Fish and Game Code, to read:

7710.1. A closure or restriction under Section 7710, or the removal of a closure or restriction under Section 7710.5, may be appealed to the commission. The commission shall hear and decide the appeal within a time that is meaningful, taking into account the duration of the fishery and the economics of the fishery.

SEC. 12. Section 7881 of the Fish and Game Code is amended to read:

7881. (a) Every person who owns or operates a vessel in public waters in connection with fishing operations for profit in this state, or who brings fish into this state, or who, for profit, permits persons to fish therefrom, shall submit an application for commercial boat

registration on forms provided by the department and shall be issued a registration number.

(b) Upon payment of a fee of two hundred dollars ($200) by the resident owner or operator of the vessel, the department shall issue a commercial boat registration. The commercial boat registration shall be carried aboard the vessel at all times and posted in a conspicuous place.

(c) Upon payment of a fee of four hundred dollars ($400) by the nonresident owner or operator of the vessel, the department shall issue a commercial boat registration. The commercial boat registration shall be carried aboard the vessel at all times and posted in a conspicuous place.

(d) If a registered vessel is lost, destroyed, or sold, the owner of the vessel shall immediately report the loss, destruction, or sale to the department.

SEC. 13. Section 8140 of the Fish and Game Code is amended to read:

8140. All fish, the taking of which is not otherwise restricted for commercial purposes, by state or federal law or any regulations adopted pursuant to those laws, may be taken at any time for commercial purposes.

SEC. 14. Article 17 (commencing with Section 8585) is added to Chapter 2 of Part 3 of Division 6 of the Fish and Game Code, to read:

Article 17. Nearshore Fisheries Management Act

8585. This article shall be known and may be cited as the Nearshore Fisheries Management Act.

8585.5. The Legislature finds and declares that important commercial and recreational fisheries exist on numerous stocks of rockfish (genus Sebastes), California sheephead (genus Semicossyphus), kelp greenling (genus Hexagrammos), cabezon (genus Scorpaenichthys), and scorpionfish (genus Scorpaens), in the nearshore state waters extending from the shore to one nautical mile offshore the California coast, that there is increasing pressure being placed on these fish from recreational and commercial fisheries, that many of these fish species found in the nearshore waters are slow growing and long lived, and that, if depleted, many of these species may take decades to rebuild. The Legislature further finds and declares that, although extensive research has been conducted on some of these species by state and federal governments, there are many gaps in the information on these species and their habitats and that there is no program currently adequate for the systematic research, conservation, and management of nearshore fish stocks and the sustainable activity of recreational and commercial nearshore fisheries. The Legislature further finds and declares that recreational fishing in California generates funds pursuant to the Federal Aid in Sport Fish Restoration Act (16 U.S.C. Secs. 777 to 777*l*, inclusive),

with revenues used for, among other things, research, conservation, and management of nearshore fish. The Legislature further finds and declares that a program for research and conservation of nearshore fish species and their habitats is needed, and that a management program for the nearshore fisheries is necessary. The Legislature further finds and declares that the commission should be granted additional authority to regulate the commercial and recreational fisheries to assure the sustainable populations of nearshore fish stocks. Lastly, the Legislature finds and declares that, whenever feasible and practicable, it is the policy of the state to assure sustainable commercial and recreational nearshore fisheries, to protect recreational opportunities, and to assure long-term employment in commercial and recreational fisheries.

8586. The following definitions govern the construction of this article:

(a) "Nearshore fish stocks" means any of the following: rockfish (genus Sebastes) for which size limits are established under this article, California sheephead (Semicossyphus pulcher), greenlings of the genus Hexagrammos, cabezon (Scorpaenichthys marmoratus), scorpionfish (Scorpaensa quttata), and may include other species of finfish found primarily in rocky reef or kelp habitat in nearshore waters.

(b) "Nearshore fisheries" means the commercial or recreational take or landing of any species of nearshore finfish stocks.

(c) "Nearshore waters" means the ocean waters of the state extending from the shore to one nautical mile from land, including one mile around offshore rocks and islands.

8586.1. Funding to pay the costs of this article shall be made available from the revenues deposited in the Fish and Game Preservation Fund pursuant to Sections 8587, 8589.5, and 8589.7, and other funds appropriated for these purposes.

8587. Effective April 1, 1999, any person taking, possessing aboard a boat, or landing any species of nearshore fish stock for commercial purposes shall possess a valid nearshore fishing permit issued to that person that has not been suspended or revoked. When using a boat to take nearshore fish stocks at least one person aboard the boat shall have a valid nearshore fishery permit. Nearshore fishing permits are revocable. The fee for a nearshore fishing permit is one hundred and twenty five dollars ($125).

8587.1. (a) During the preparation and implementation of, and post-adoption actions taken pursuant to the nearshore fisheries management plan adopted pursuant to subdivision (d) of Section 7072, the commission may do any of the following:

(1) Adopt regulations that make inoperative any statute or regulation of the commission relevant to the nearshore fishery, including, but not limited to, a statute or regulation that regulates bag limits, and time, area, and methods of take of fish pursuant to this article. Any regulation adopted by the commission pursuant to this

paragraph shall specify the particular statute or regulation of the commission to be made inoperative.

(2) Adopt regulations governing take of fish that are not presently regulated by statute or regulation of the commission.

(3) Adopt regulations governing take of fish that are presently regulated by statute or regulation of the commission, but only if the statutes or regulations are first made inoperative pursuant to this paragraph for the effective period of the regulation adopted by the commission pursuant to this paragraph, and only after consulting with representatives of the affected fisheries.

(b) The circumstances, restrictions, and requirements of Section 219 do not apply to regulations adopted pursuant to paragraph (1) or (3) of subdivision (a).

8587.2. (a) On or after January 1, 1999, the commission may adopt such regulations as it determines necessary, based on the advice and recommendations of the department, to regulate nearshore fish stocks and fisheries.

(b) Any regulations adopted under this section shall be adopted following consultation with fishery participants and other interested persons, and following completion of the nearshore fisheries management plan by the department and its adoption by the commission. Regulations adopted by the commission may include, but are not limited to, establishing restricted access areas, requiring submittal of landing and permit information, including logbooks, regulating fishing seasons, areas, and gear, and establishing interim harvest guidelines for individual or multiple species and species groups of nearshore fish stocks.

8588. (a) Notwithstanding any other provision of this code or any regulation adopted by the commission, no fish listed under this section taken pursuant to a commercial fishing license, shall be possessed, sold, or purchased unless it exceeds the specified minimum total length in the round or dressed with head on, as established under subdivision (b), except that nearshore finfish taken in trawls and landed dead are exempt from these size limits.

(b) The minimum size limits are as follows:

(1)	Black and yellow rockfish (Sebastes chrysomelas)	10 in. or 254 mm
(2)	Gopher rockfish (Sebastes carnatus)	10 in. or 254 mm
(3)	Kelp rockfish (Sebastes atrovirens)	10 in. or 254 mm
(4)	California scorpionfish or sculpin (Scorpaena guttata)	10 in. or 254 mm

(5)	Greenlings of the Genus Hexagrammos (Hexagrammos spp.)	12 in. or 305 mm
(6)	Brown rockfish (Sebastes auriculatus)	12 in. or 305 mm
(7)	China rockfish (Sebastes nebulosus)	12 in. or 305 mm
(8)	Grass rockfish (Sebastes rastrelliger)	12 in. or 305 mm
(9)	California sheephead (Semicossyphus pulcher)	12 in. or 305 mm
(10)	Cabezon (Scorpaenichthys marmoratus)	14 in. or 356 mm

(c) The commission may adopt regulations to modify the minimum size limits or to specify maximum size limits based on the best available scientific information.

(d) Regulations adopted by the commission pursuant to subdivision (c) shall only be adopted following public notice and not less than one public hearing.

(e) Any nearshore fish as defined in this article or in regulations adopted by the commission pursuant to this section that are taken in a nearshore fishery shall be measured immediately upon being brought aboard the vessel and released immediately if not in compliance with the size limits specified.

(f) This section shall remain in effect until the adoption of regulations implementing a fishery management plan for nearshore fish stocks by the commission, and as of that date, is repealed.

8589. Funding to prepare the plan pursuant to subdivision (d) of Section 7072 and any planning and scoping meetings shall be derived from moneys deposited in the Fish and Game Preservation Fund pursuant to Section 8587 and other funds appropriated for these purposes.

8589.5. The commission shall temporarily suspend and may permanently revoke the nearshore fishing permit of any person convicted of a violation of this article. In addition to, or in lieu of, a license or permit suspension or revocation, the commission may adopt and apply a schedule of fines for convictions of violations of this article.

8589.7. (a) Fees received by the department pursuant to Section 8587 shall be deposited in the Fish and Game Preservation Fund to be used by the department to prepare, develop, and implement the nearshore fisheries management plan and for the following purposes:

(1) For research and management of nearshore fish stocks and nearshore habitat. For the purposes of this section, "research" includes, but is not limited to, investigation, experimentation,

monitoring, and analysis and "management" means establishing and maintaining a sustainable utilization.

(2) For supplementary funding of allocations for the enforcement of statutes and regulations applicable to nearshore fish stocks, including, but not limited to, the acquisition of special equipment and the production and dissemination of printed materials, such as pamphlets, booklets, and posters aimed at compliance with nearshore fishing regulations.

(3) For the direction of volunteer groups assisting with nearshore fish stocks and nearshore habitat management, for presentations of related matters at scientific conferences and educational institutions, and for publication of related material.

(b) The department shall maintain internal accounts that ensure that the fees received pursuant to Section 8587 are disbursed for the purposes stated in subdivision (a).

(c) The commission shall require an annual accounting from the department on the deposits into, and expenditures from, the Fish and Game Preservation Fund, as related to the revenues generated pursuant to Section 8587. Notwithstanding Section 7550.5 of the Government Code, a copy of the accounting shall be provided to the Legislature for review by the Joint Committee on Fisheries and Aquaculture, and if that committee is not in existence at the time, by the appropriate policy committee in each house of the Legislature.

(d) Unencumbered fees collected pursuant to Section 8587 during any previous calendar year shall remain in the fund and expended for the purposes of subdivision (a). All interest and other earnings on the fees received pursuant to Section 8587 shall be deposited in the fund and shall be used for the purposes of subdivision (a).

SEC. 15. Section 8842 of the Fish and Game Code, as amended by Section 46.5 of Chapter 870 of the Statutes of 1996, is amended to read:

8842. (a) Trawl nets of a design prescribed by the commission may be used or possessed to take shrimp or prawns under a revocable, nontransferable permit issued by the department under regulations that the commission shall prescribe that are not inconsistent with this section. A permit is valid, unless revoked or canceled, from April 1 to March 31 of the next succeeding calendar year. A permit issued under this section for the permit year beginning on April 1, 1994, and thereafter, may be issued pursuant to paragraph (2) of subdivision (c) to the owner of a vessel registered pursuant to Section 7881, as designated in the application for the permit. That permit shall authorize the use of that designated vessel for the purpose of using trawl nets to take shrimp or prawns pursuant to this section.

Sections 8831, 8833, 8835, and 8836 do not apply to trawl nets used or possessed under a permit issued pursuant to this section.

(b) When fishing for pink shrimp (Pandalus jordani) under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,500 pounds of incidentally taken fish per calendar day of a fishing trip, except Pacific whiting, shortbelly rockfish, and

arrowtooth flounder that may be taken in any amount. Not more than 150 pounds of California halibut shall be possessed or landed when fishing under a permit issued pursuant to this section. When fishing for ridgeback prawn and spotted prawn under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,000 pounds of incidentally taken fish per trip, except for sea cucumbers that may be taken in any amount.

(c) Beginning with the 1995–96 permit year, a pink shrimp permit shall be issued only to applicants who possessed a valid pink shrimp permit in the immediately preceding permit year.

(d) The fee for the permit to take pink shrimp shall be two hundred eighty-five dollars ($285).

(e) This section shall remain in effect only until April 1, 2001, and as of that date is repealed, unless a later enacted statute, which is enacted before April 1, 2001, deletes or extends that date.

SEC. 16. Section 8842 of the Fish and Game Code, as amended by Section 47 of Chapter 870 of the Statutes of 1996, is amended to read:

8842. (a) Trawl nets of a design prescribed by the commission may be used or possessed to take shrimps or prawns under a permit issued by the department under regulations adopted by the commission.

Sections 8831, 8833, 8835, and 8836 do not apply to trawl nets used or possessed under a permit issued pursuant to this section.

(b) When fishing for pink shrimp (Pandalus jordani) under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,500 pounds of incidentally taken fish per calendar day of a fishing trip, except Pacific whiting, shortbelly rockfish, and arrowtooth flounder, which may be taken in any amount not in excess of federal regulations. No Pacific halibut and not more than 150 pounds of California halibut shall be possessed or landed when fishing under a permit issued pursuant to this section. When fishing for ridgeback prawn and spotted prawn under a permit issued pursuant to this section, it is unlawful to possess in excess of 1,000 pounds of incidentally taken fish per trip.

(c) This section shall become operative on April 1, 2001.

SEC. 17. Section 9001.7 is added to the Fish and Game Code, to read:

9001.7. Finfish traps authorized for use to take fish other than sablefish and hagfish in waters of the state between the California-Oregon border and a line extending due west magnetic from Point Arguello, Santa Barbara County, shall be subject to the following limitations:

(a) Lobster, and crabs of the genus Cancer, shall not be used as bait in finfish traps.

(b) During the period from one hour after sunset to one hour before sunrise, finfish traps that are left in the water shall be unbaited with the door secured open. If, for reasons beyond the control of the

permittee, all trap doors cannot be secured open prior to one hour after sunset, the permittee shall immediately notify the department.

(c) Timed buoy release mechanisms commonly termed "popups" shall not be used on buoy lines attached to finfish traps.

(d) Trap destruction devices used on finfish traps shall conform to the current requirements for those devices adopted by the commission.

(e) No finfish traps shall be set within 750 feet of any pier, breakwall, or jetty in District 6, 7, 17, or 18.

(f) No more than 50 finfish traps may be used in state waters along the mainland shore.

(g) Effective January 1, 2000, the mesh of any finfish trap used pursuant to this section shall measure not less than two inches by two inches.

SEC. 18. Section 9027 of the Fish and Game Code is amended to read:

9027. (a) (1) Notwithstanding Section 9026, 9028, or 9029, in the area described in subdivision (b), it is unlawful to use more than 150 hooks on a vessel to take fish for commercial purposes when using fishing lines authorized pursuant to this article.

(2) In the area described in subdivision (b), not more than 15 hooks shall be attached to any one fishing line, and no fishing line shall be attached to another fishing line, while those lines are being used for commercial fishing pursuant to this article except that a single troll line with not more than 30 hooks may be used to take California halibut.

(3) Each fishing line used pursuant to this article that is not attached to a vessel fishing in the area described in subdivision (b) shall be buoyed and the commercial fishing license number issued pursuant to Section 7850 to the permittee who is using the fishing line shall be marked on, and visible on the upper one-half of each buoy, in numbers at least two inches high.

(b) This section applies only to waters within one mile of shore within Fish and Game Districts 6, 7, and 10, but not including ocean waters in Fish and Game District 7 between a line extending 203 degrees magnetic from Gitchell Creek and a line extending 252 degrees magnetic from False Cape in Humboldt County and not including ocean waters in Fish and Game District 10 between a line extending 245 degrees magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and a line extending due west magnetic from Point Bolinas in Marin County.

(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. 19. Section 9027.5 of the Fish and Game Code is amended to read:

9027.5. (a) (1) Notwithstanding Section 9026, 9028, or 9029, in the area described in subdivision (b), it is unlawful to use more than

150 hooks on a vessel to take fish for commercial purposes when using fishing lines authorized pursuant to this article.

(2) In the area described in subdivision (b), not more that 15 hooks shall be attached to any one fishing line, and no fishing line shall be attached to another fishing line, while those lines are being used for commercial fishing pursuant to this article.

(3) Each fishing line used pursuant to this article that is not attached to a vessel fishing in the area described in subdivision (b) shall be buoyed and the commercial fishing license number issued pursuant to Section 7852 to the permittee who is using the fishing line shall be marked on, and visible on the upper one-half of each buoy, in numbers not less than two inches in height.

(b) This section applies only to waters within one mile of the mainland shore in Fish and Game Districts 17 , 18, and 19.

(c) Subdivision (a) does not apply to persons who are fishing south of a line extending due west from Point Conception and who are fishing for halibut, white sea bass, sharks, skates, or rays. The exemption in this subdivision does not apply if all of the fish possessed by persons aboard the vessel does not consist of at least 80 percent by number of halibut, white sea bass, sharks, skates, and rays.

(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. 20. Section 9029.5 of the Fish and Game Code is amended to read:

9029.5. (a) Notwithstanding Sections 9025.5, 9026, and 9029, it is unlawful to use set lines, vertical fishing lines, or troll lines to take fish for commercial purposes within one mile of the nearest point of land on the mainland shore in Fish and Game District 7 or 10 from sunset on Friday to sunset on the following Sunday or from sunset of the day before a state recognized legal holiday until sunset on that holiday. For the purposes of this subdivision, a "set line" is a fishing line that is anchored to the bottom on each end and is not free to drift with the tide or current and a "vertical fishing line" is a fishing line that is anchored to the ocean bottom at one end and attached at the other end on the surface to a fishing vessel or a buoy. This section does not apply to the taking of salmon or California halibut for commercial purposes.

(b) This section shall remain in effect only until January 1, 2004, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2004, deletes or extends that date.

SEC. 21. Section 11125.6 is added to the Government Code, to read:

11125.6. (a) An emergency meeting may be called at any time by the president of the Fish and Game Commission or by a majority of the members of the commission to consider an appeal of a closure of or restriction in a fishery adopted pursuant to Section 7710 of the Fish and Game Code. In the case of an emergency situation involving

matters upon which prompt action is necessary due to the disruption or threatened disruption of an established fishery, the commission may hold an emergency meeting without complying with the 10-day notice requirement of Section 11125 or the 48-hour notice requirement of Section 11125.4 if the delay necessitated by providing the 10-day notice of a public meeting required by Section 11125 or the 48-hour notice required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state.

(b) At the commencement of an emergency meeting called pursuant to this section, the commission shall make a finding in open session that the delay necessitated by providing notice 10 days prior to a meeting as required by Section 11125 or 48 hours prior to a meeting as required by Section 11125.4 would significantly adversely impact the economic benefits of a fishery to the participants in the fishery and to the people of the state or significantly adversely impact the sustainability of a fishery managed by the state. The finding shall set forth the specific facts that constitute the impact to the economic benefits of the fishery or the sustainability of the fishery. The finding shall be adopted by a vote of at least four members of the commission, or, if less than four of the members are present, a unanimous vote of those members present. Failure to adopt the finding shall terminate the meeting.

(c) Newspapers of general circulation and radio or television stations that have requested notice of meetings pursuant to Section 11125 shall be notified by the presiding officer of the commission, or a designee thereof, one hour prior to the emergency meeting by telephone.

(d) The minutes of an emergency meeting called pursuant to this section, a list of persons who the president of the commission, or a designee thereof, notified or attempted to notify, a copy of the rollcall vote, and any action taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible.

SEC. 22. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs 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 1053

An act to add Section 8588 to the Fish and Game Code, relating to commercial fishing.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 8588 is added to the Fish and Game Code, to read:

8588. (a) Notwithstanding any other provision of this code or any regulation adopted by the commission, no fish listed under this section taken pursuant to a commercial fishing license, shall be possessed, sold, or purchased unless it exceeds the specified minimum total length in the round or dressed with head on, as established under subdivision (b), except that nearshore finfish taken in trawls and landed dead are exempt from these size limits.

(b) The minimum size limits are as follows:

(1)	Black and yellow rockfish (Sebastes chrysomelas)	10 in. or 254 mm
(2)	Gopher rockfish (Sebastes carnatus)	10 in. or 254 mm
(3)	Kelp rockfish (Sebastes atrovirens)	10 in. or 254 mm
(4)	California scorpionfish or sculpin (Scorpaena guttata)	10 in. or 254 mm
(5)	Greenlings of the Genus Hexagrammos (Hexagrammos spp.)	12 in. or 305 mm
(6)	China rockfish (Sebastes nebulosus)	12 in. or 305 mm
(7)	Grass rockfish (Sebastes rastrelliger)	12 in. or 305 mm
(8)	California sheephead (Semicossyphus pulcher)	12 in. or 305 mm
(9)	Cabezon (Scorpaenichthys marmoratus)	14 in. or 356 mm

(c) The commission may adopt regulations to modify the minimum size limits or to specify maximum size limits based on the best available scientific information.

(d) Regulations adopted by the commission pursuant to subdivision (c) shall only be adopted following public notice and not less than one public hearing.

(e) Any nearshore fish as defined in this article or in regulations adopted by the commission pursuant to this section that are taken in a nearshore fishery shall be measured immediately upon being brought aboard the vessel and released immediately if not in compliance with the size limits specified.

(f) This section shall remain in effect until the adoption of regulations implementing a fishery management plan for nearshore fish stocks by the commission, and as of that date, is repealed.

SEC. 2. This bill shall become operative only if Assembly Bill 1241 of the 1997–98 Regular Session is enacted and becomes effective on or before 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.

CHAPTER 1054

An act to amend Sections 215, 300, 300.1, 300.5, 301, 302, 304, 309, 319, 325, 328, 329, 331, 331.5, 332, 341, 358, 358.1, 360, 361.2, 361.5, 362, 362.8, 364, 365, 366.1, 366.21, 366.22, 366.26, 366.3, 367, 368, 369, 370, 380, 386, and 387 of, and to repeal Sections 332.5, 351.5, 353.5, 360.5, 362.5, 366.2, and 366.25 of, the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 215 of the Welfare and Institutions Code is amended to read:

215. As used in this chapter, unless otherwise specifically provided, the term "probation officer" or "social worker" shall include the juvenile probation officer or the person who is both the juvenile probation officer and the adult probation officer, and any social worker in a county welfare department or any social worker in a California Indian tribe or any out-of-state Indian tribe that has reservation land that extends into the state that has authority, pursuant to an agreement with the department concerning child welfare services or foster care payments under the Aid to Families with Dependent Children program when supervising dependent children of the juvenile court pursuant to Section 272 by order of the court under Section 300, and the term "department of probation" shall mean the department of juvenile probation or the department wherein the services of juvenile and adult probation are both performed.

SEC. 2. Section 300 of the Welfare and Institutions Code is amended to read:

300. Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's

medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social

worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section "guardian" means the legal guardian of the child.

SEC. 3. Section 300.1 of the Welfare and Institutions Code is amended to read:

300.1. Notwithstanding subdivision (e) of Section 361 and Section 16507, family reunification services shall not be provided to a child adjudged a dependent pursuant to subdivision (h) of Section 300.

SEC. 4. Section 300.5 of the Welfare and Institutions Code is amended to read:

300.5. In any case in which a child is alleged to come within the provisions of Section 300 on the basis that he or she is in need of medical care, the court, in making that finding, shall give consideration to any treatment being provided to the child by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof.

SEC. 5. Section 301 of the Welfare and Institutions Code is amended to read:

301. (a) In any case in which a social worker after investigation of an application for petition or other investigation he or she is authorized to make, determines that a child is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the social worker may, in lieu of filing a petition or subsequent to dismissal of a petition already filed, and with consent of the child's parent or guardian, undertake a program of supervision of the child. If a program of supervision is undertaken, the social worker shall attempt to ameliorate the situation which brings the child within, or creates the probability that the child will be within, the jurisdiction of Section 300 by providing or arranging to contract for all appropriate child welfare services pursuant to Sections 16506 and 16507.3, within the time periods specified in those sections. No further child welfare services shall be provided subsequent to these time limits. If the family has refused to cooperate with the services being provided, the social worker may file a petition with the juvenile court pursuant to Section 332. Nothing in this section shall be construed to prevent the social worker from filing a petition pursuant to Section 332 when otherwise authorized by law.

(b) The program of supervision of the child undertaken pursuant to this section may call for the child to obtain care and treatment for the misuse of, or addiction to, controlled substances from a county mental health service or other appropriate community agency.

SEC. 6. Section 302 of the Welfare and Institutions Code is amended to read:

302. (a) A juvenile court may assume jurisdiction over a child described in Section 300 regardless of whether the child was in the physical custody of both parents or was in the sole legal or physical custody of only one parent at the time that the events or conditions occurred that brought the child within the jurisdiction of the court.

(b) Unless their parental rights have been terminated, both parents shall be notified of all proceedings involving the child. In any case where the social worker is required to provide a parent or guardian with notice of a proceeding at which the social worker intends to present a report, the social worker shall also provide both parents, whether custodial or noncustodial, or any guardian, or the counsel for the parent or guardian a copy of the report prior to the hearing, either personally or by first-class mail. The social worker shall not charge any fee for providing a copy of a report required by this subdivision. The social worker shall keep confidential the address of any parent who is known to be the victim of domestic violence.

(c) When a child is adjudged a dependent of the juvenile court, any issues regarding custodial rights between his or her parents shall be determined solely by the juvenile court, as specified in Sections 304, 361.2, and 362.4, so long as the child remains a dependent of the juvenile court.

SEC. 7. Section 304 of the Welfare and Institutions Code is amended to read:

304. After a petition has been filed pursuant to Section 311, and until the time that the petition is dismissed or dependency is terminated, no other division of any superior court may hear proceedings pursuant to Part 2 (commencing with Section 3020) of Division 8 of the Family Code regarding the custody of the child or proceedings under Part 2 (commencing with Section 1500) of Division 4 of the Probate Code, except as otherwise authorized in this code, regarding the establishment of a guardianship for the child. While the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court. In deciding issues between the parents or between a parent and a guardian regarding custody of a child who has been adjudicated a dependent of the juvenile court, the juvenile court may review any records that would be available to the domestic relations division of a superior court hearing that matter. The juvenile court, on its own motion, may issue an order as provided for in Section 213.5, or as described in Section 6218 of the Family Code. The Judicial Council shall adopt forms for these restraining orders. These form orders shall not be confidential and shall be enforceable in the same manner as any other order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code.

This section shall not be construed to divest the domestic relations division of a superior court from hearing any issues regarding the custody of a child when that child is no longer a dependent of the juvenile court.

SEC. 8. Section 309 of the Welfare and Institutions Code is amended to read:

309. (a) Upon delivery to the social worker of a child who has been taken into temporary custody under this article, the social worker shall immediately investigate the circumstances of the child

and the facts surrounding the child's being taken into custody and attempt to maintain the child with the child's family through the provision of services. The social worker shall immediately release the child to the custody of the child's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The child has no parent, guardian, or responsible relative; or the child's parent, guardian, or responsible relative is not willing to provide care for the child.

(2) Continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(4) The child has left a placement in which he or she was placed by the juvenile court.

(b) In any case in which there is reasonable cause for believing that a child who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in Section 300, the child shall be deemed to have been taken into temporary custody and delivered to the social worker for the purposes of this chapter while the child is at the office of the physician or surgeon or the medical facility.

(c) If the child is not released to his or her parent or guardian, the child shall be deemed detained for purposes of this chapter.

(d) If an able and willing relative, as defined in Section 319, is available and requests temporary placement of the child pending the detention hearing, the social worker shall initiate an emergency assessment of the relative's suitability, which shall include an in-home visit to assess the safety of the home and the ability of the relative to care for the child on a temporary basis, and a consideration of the results of a criminal records check and allegations of prior child abuse or neglect concerning the relative and other adults in the home. The results of the assessment shall be provided to the court in the social worker's report as required by Section 319.

SEC. 9. Section 319 of the Welfare and Institutions Code is amended to read:

319. At the initial petition hearing the court shall examine the child's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the child, as provided in Section 350.

The social worker shall report to the court on the reasons why the child has been removed from the parent's custody; the need, if any, for continued detention; on the available services and the referral methods to those services which could facilitate the return of the child to the custody of the child's parents or guardians; and whether there are any relatives who are able and willing to take temporary

custody of the child. The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300 and any of the following circumstances exist:

(a) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parents' or guardians' physical custody.

(b) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(c) The child has left a placement in which he or she was placed by the juvenile court.

(d) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services which would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention. If the child can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the child with his or her parent or guardian and order that the services shall be provided. If the child cannot be returned to the custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child. Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts were reasonable. Whenever a court orders a child detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary,

and shall order services to be provided as soon as possible to reunify the child and his or her family if appropriate.

When the child is not released from custody the court may order that the child shall be placed in the suitable home of a relative or in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court or in an appropriate certified family home whose license is pending and all the prelicense requirements for that placement have been met as set forth in subdivision (e) of Section 361.2 for a period not to exceed 15 judicial days.

As used in this section, "relative" means an adult who is related to the child or child's half sibling by blood or affinity, including all relatives whose status is preceded by the words "step," "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or a sibling of the child.

The court shall consider the recommendations of the social worker based on the emergency assessment of the relative's suitability, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

SEC. 9.5. Section 319 of the Welfare and Institutions Code is amended to read:

319. At the initial petition hearing the court shall examine the child's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the child, as provided in Section 350.

The social worker shall report to the court on the reasons why the child has been removed from the parent's custody; the need, if any, for continued detention; on the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents or guardians; and whether there are any relatives who are able and willing to take temporary custody of the child. The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300 and any of the following circumstances exist:

(a) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parents' or guardians' physical custody.

(b) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(c) The child has left a placement in which he or she was placed by the juvenile court.

(d) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention. If the child can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the child with his or her parent or guardian and order that the services shall be provided. If the child cannot be returned to the custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child. Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts were reasonable. Whenever a court orders a child detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, and shall order services to be provided as soon as possible to reunify the child and his or her family if appropriate.

When the child is not released from custody the court may order that the child shall be placed in the suitable home of a relative or in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court or in an appropriate certified family home whose license is pending and all the prelicense requirements for that placement have been met as set forth in subdivision (e) of Section 361.2 for a period not to exceed 15 judicial days.

As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or a sibling of the child.

The court shall consider the recommendations of the social worker based on the emergency assessment of the relative's suitability, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

SEC. 10. Section 325 of the Welfare and Institutions Code is amended to read:

325. A proceeding in the juvenile court to declare a child to be a dependent child of the court is commenced by the filing with the court, by the social worker, of a petition, in conformity with the requirements of this article.

SEC. 11. Section 328 of the Welfare and Institutions Code is amended to read:

328. Whenever the social worker has cause to believe that there was or is within the county, or residing therein, a person described in Section 300, the social worker shall immediately make any investigation he or she deems necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced. If the social worker determines that it is appropriate to offer child welfare services to the family, the social worker shall make a referral to these services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9.

However, this section does not require an investigation by the social worker with respect to a child delivered or referred to any agency pursuant to Section 307.5.

The social worker shall interview any child four years of age or older who is a subject of an investigation, and who is in juvenile hall or other custodial facility, or has been removed to a foster home, to ascertain the child's view of the home environment. If proceedings are commenced, the social worker shall include the substance of the interview in any written report submitted at an adjudicatory hearing, or if no report is then received in evidence, the social worker shall include the substance of the interview in the social study required by Section 358.

SEC. 12. Section 329 of the Welfare and Institutions Code is amended to read:

329. Whenever any person applies to the social worker to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a child within the provisions of Section 300, and setting forth facts in support thereof. The social worker shall immediately investigate as he or she deems necessary to determine whether proceedings in the juvenile court should be commenced. If the social worker does not take action under Section 330 and does not file a petition in the juvenile court within three weeks after the application, he or she shall endorse upon the affidavit of the applicant his or her decision not to proceed further and his or her reasons therefor and shall immediately notify the applicant of the action taken or the decision rendered by him or her under this section. The social worker shall retain the affidavit and his or her endorsement thereon for a period of 30 days after notifying the applicant.

SEC. 13. Section 331 of the Welfare and Institutions Code is amended to read:

331. When any person has applied to the social worker, pursuant to Section 329, to commence juvenile court proceedings and the social worker fails to file a petition within three weeks after the application, the person may, within one month after making the application, apply to the juvenile court to review the decision of the social worker, and the court may either affirm the decision of the social worker or order him or her to commence juvenile court proceedings.

SEC. 14. Section 331.5 of the Welfare and Institutions Code is amended to read:

331.5. When any officer has referred or delivered a child to an agency pursuant to Section 307.5, and that agency does not initiate a service program for the child within the time periods required by Section 328.3, the referring agency may, within 10 court days following receipt of the notification from the referral agency, apply to the social worker for a review of that decision.

SEC. 15. Section 332 of the Welfare and Institutions Code is amended to read:

332. A petition to commence proceedings in the juvenile court to declare a child a ward or a dependent child of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and the subdivision under which the proceedings are instituted. If it is alleged that the child is a person described by subdivision (e) of Section 300, the petition shall include an allegation pursuant to that section.

(d) The name, age, and address, if any, of the child upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to the petitioner, of both parents and any guardian of the child. If there is

no parent or guardian residing within the state, or if his or her place of residence is not known to the petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there is none, the adult relative residing nearest to the location of the court. If it is known to the petitioner that one of the parents is a victim of domestic violence and that parent is currently living separately from the batterer-parent, the address of the victim-parent shall remain confidential.

(f) A concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the child upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if he or she is detained in custody, the date and the precise time the child was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the child, of all of the following: (1) Section 903 makes that person, the estate of that person, and the estate of the child, liable for the cost of the care, support, and maintenance of the child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court; (2) Section 903.1 makes that person, the estate of that person, and the estate of the child, liable for the cost to the county of legal services rendered to the child or the parent by a private attorney or a public defender appointed pursuant to the order of the juvenile court; (3) Section 903.2 makes that person, the estate of that person, and the estate of the child, liable for the cost to the county of the supervision of the child by the social worker pursuant to the order of the juvenile court; and (4) the liabilities established by these sections are joint and several.

SEC. 16. Section 332.5 of the Welfare and Institutions Code is repealed.

SEC. 17. Section 341 of the Welfare and Institutions Code is amended to read:

341. Upon request of the social worker, district attorney, the child, or the child's parent, guardian, or custodian, or on the court's own motion, the court or the clerk of the court, or an attorney, pursuant to Section 1985 of the Code of Civil Procedure, shall issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing regarding a child who is alleged or determined by the court to be a person described by Section 300. When a person attends a juvenile court hearing as a witness upon a subpoena, in its discretion, the court may by an order on its minutes, direct the county auditor to draw his or her warrant upon the county treasurer in favor of the witness for witness fees in the amount and

manner prescribed by Section 68093 of the Government Code. The fees are county charges.

SEC. 18. Section 351.5 of the Welfare and Institutions Code is repealed.

SEC. 19. Section 353.5 of the Welfare and Institutions Code is repealed.

SEC. 20. Section 358 of the Welfare and Institutions Code is amended to read:

358. (a) After finding that a child is a person described in Section 300, the court shall hear evidence on the question of the proper disposition to be made of the child. Prior to making a finding required by this section, the court may continue the hearing on its own motion, the motion of the parent or guardian, or the motion of the child, as follows:

(1) If the child is detained during the continuance, and the social worker is not alleging that subdivision (b) of Section 361.5 is applicable, the continuance shall not exceed 10 judicial days. The court may make an order for detention of the child or for the child's release from detention, during the period of continuance, as is appropriate.

(2) If the child is not detained during the continuance, the continuance shall not exceed 30 days after the date of the finding pursuant to Section 356. However, the court may, for cause, continue the hearing for an additional 15 days.

(3) If the social worker is alleging that subdivision (b) of Section 361.5 is applicable, the court shall continue the proceedings for a period not to exceed 30 days. The social worker shall notify each parent of the content of subdivision (b) of Section 361.5 and shall inform each parent that if the court does not order reunification a permanency planning hearing will be held, and that his or her parental rights may be terminated within the timeframes specified by law.

(b) Before determining the appropriate disposition, the court shall receive in evidence the social study of the child made by the social worker, any study or evaluation made by a child advocate appointed by the court, and other relevant and material evidence as may be offered. In any judgment and order of disposition, the court shall specifically state that the social study made by the social worker and the study or evaluation made by the child advocate appointed by the court, if there be any, has been read and considered by the court in arriving at its judgment and order of disposition. Any social study or report submitted to the court by the social worker shall include the individual child's case plan developed pursuant to Section 16501.1.

(c) If the court finds that a child is described by subdivision (h) of Section 300 or that subdivision (b) of Section 361.5 may be applicable, the court shall conduct the dispositional proceeding pursuant to subdivision (c) of Section 361.5.

SEC. 21. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(e) Whether the parent has been advised of his or her option to participate in adoption planning and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(f) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration shall not be cause for continuance of the dispositional hearing.

SEC. 21.5. Section 358.1 of the Welfare and Institutions Code is amended to read:

358.1. Each social study or evaluation made by a social worker or child advocate appointed by the court, required to be received in evidence pursuant to Section 358, shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child to his or her parents and for achieving legal permanence for the child if efforts to reunify fail, is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the child will be served by granting reasonable visitation rights with the child to his or her grandparents, in order to maintain and strengthen the child's family relationships.

(d) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(e) Whether the parent has been advised of his or her option to participate in adoption planning and to voluntarily relinquish the child for adoption if an adoption agency is willing to accept the relinquishment.

(f) The appropriateness of any relative placement pursuant to Section 361.3; however, this consideration shall not be cause for continuance of the dispositional hearing.

(g) In every proceeding involving a foster child, whether the foster parent was interviewed, and any information obtained from the foster parent.

(h) For purposes of this section, the term "foster parent" includes a relative caregiver or a certified foster parent who has been approved to adopt a child by a licensed adoption agency.

SEC. 22. Section 360 of the Welfare and Institutions Code is amended to read:

360. After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows:

(a) Notwithstanding any other provision of law, if the court finds that the child is a person described by Section 300 and the parent has advised the court that the parent is not interested in family maintenance or family reunification services, it may, in addition to or in lieu of adjudicating the child a dependent child of the court, order a legal guardianship, appoint a legal guardian, and issue letters of guardianship, if the court determines that a guardianship is in the best interest of the child, provided the parent and the child agree to the guardianship, unless the child's age or physical, emotional, or mental condition prevents the child's meaningful response. The court shall advise the parent and the child that no reunification services will be provided as a result of the establishment of a guardianship. The proceeding for the appointment of a guardian shall be in the juvenile court.

Any application for termination of guardianship shall be filed in juvenile court in a form as may be developed by the Judicial Council pursuant to Section 68511 of the Government Code. Section 388 shall apply to this order of guardianship.

No person shall be appointed a legal guardian under this section until an assessment as specified in subdivision (g) of Section 361.5 is read and considered by the court and reflected in the minutes of the court. The assessment shall include the following:

(1) Current search efforts for, and notification of, a noncustodial parent in the manner provided in Section 337.

(2) A review of the amount of and nature of any contact between the child and his or her parents since the filing of the petition.

(3) An evaluation of the child's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective guardian, particularly the caretaker, to include a social history including a screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the child's needs, and the understanding of the legal and financial rights and responsibilities of guardianship.

(5) The relationship of the child to any identified prospective guardian, the duration and nature of the relationship, the motivation for seeking guardianship, and a statement from the child concerning the guardianship, unless the child's age or physical, emotional, or other condition precludes the child's meaningful response, and if so, a description of the condition.

(6) An analysis of the likelihood that the child would be adopted if parental rights were terminated.

The person responsible for preparing the assessment may be called and examined by any party to the guardianship proceeding.

(b) If the court finds that the child is a person described by Section 300, it may, without adjudicating the child a dependent child of the court, order that services be provided to keep the family together and place the child and the child's parent or guardian under the supervision of the social worker for a time period consistent with Section 301.

(c) If the family subsequently is unable or unwilling to cooperate with the services being provided, the social worker may file a petition with the juvenile court pursuant to Section 332 alleging that a previous petition has been sustained and that disposition pursuant to subdivision (b) has been ineffective in ameliorating the situation requiring the child welfare services. Upon hearing the petition, the court shall order either that the petition shall be dismissed or that a new disposition hearing shall be held pursuant to subdivision (d).

(d) If the court finds that the child is a person described by Section 300, it may order and adjudge the child to be a dependent child of the court.

SEC. 23. Section 360.5 of the Welfare and Institutions Code is repealed.

SEC. 24. Section 361.2 of the Welfare and Institutions Code is amended to read:

361.2. (a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.

(b) If the court places the child with that parent it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a child pursuant to paragraphs (1) and (2) of subdivision (e).

(e) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child in any of the following:

(1) The home of a relative, including a noncustodial parent.

(2) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(3) A suitable licensed community care facility.

(4) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(5) A home or facility in accordance with the federal Indian Child Welfare Act.

(6) A child under the age of six years may be placed in a community care facility licensed as a group home for children, or a temporary shelter care facility as defined in Section 1530.8 of the Health and Safety Code, only under any of the following circumstances:

(A) When a case plan indicates that placement is for purposes of providing specialized treatment to the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, and the facility meets the applicable regulations adopted under

Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1. The specialized treatment period shall not exceed 120 days, unless additional time is needed pursuant to the case plan as documented by the caseworker and approved by the caseworker's supervisor.

(B) When a case plan indicates that placement is for purposes of providing family reunification services. In addition, the facility offers family reunification services that meet the needs of the individual child and his or her family, permits parents to have reasonable access to their children 24 hours a day, encourages extensive parental involvement in meeting the daily needs of their children, and employs staff trained to provide family reunification services. In addition, one of the following conditions exists:

(i) The child's parent is also a ward of the court and resides in the facility.

(ii) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(iii) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(f) (1) If the child is taken from the physical custody of the child's parent or guardian and unless the child is placed with relatives, the child shall be placed in foster care in the county of residence of the child's parent or guardian in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parent's or guardian's county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent's or guardian's community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the child's placement corresponding to frequent changes of residence by the parent or guardian. In determining whether the child should be moved, the social worker shall take into consideration the potential harmful effects of disrupting the placement of the child and the parent's or guardian's reason for the move.

(4) When it has been determined that it is necessary for a child to be placed in a county other than the child's parent's or guardian's county of residence, the specific reason the out-of-county placement is necessary shall be documented in the child's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the child, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a child is to be placed out-of-county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the child, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the child, shall be made available to the receiving county upon placement of the child in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a child is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the child, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the child, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the child in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern to the receiving county.

(g) Whenever the social worker must change the placement of the child and is unable to find a suitable placement within the county and must place the child outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian at least 14 days prior to the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the reasons which require placement outside the county. The parent or guardian may object to the placement not later than seven days after receipt of the notice and, upon objection, the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the child's particular needs require placement outside the county.

(h) Where the court has ordered a child placed under the supervision of the social worker and the social worker has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the child may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the social worker to determine the suitability of the family home.

(2) The social worker verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The social worker notifies the licensing agency of the proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the child. If the license is subsequently denied, the child shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

(i) Where the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the child will be served by granting visitation rights to the child's grandparents. The court shall clearly specify those rights to the supervising probation officer.

SEC. 25. Section 361.5 of the Welfare and Institutions Code, as amended by Section 2.7 of Chapter 1083 of the Statutes of 1996, is amended to read:

361.5. (a) Except as provided in subdivision (b) of this section or when the parent has voluntarily relinquished the child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 child 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 child 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 child 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 child. Physical custody of the child by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child 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 child 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 child, 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 child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child 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 child 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 child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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 child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker 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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child

bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child'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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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), or (13) 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents since the time of placement.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

(j) This section shall become operative January 1, 1999.

SEC. 25.5. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 from the date the child entered foster care.

(2) For a child 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 from the date the child entered foster care.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child 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 child 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 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month

period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a minor cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 366.26 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child 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 child, 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 child

to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child 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 child 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 that brought that child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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 child or that failure to try

reunification will be detrimental to the child because the minor is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) 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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 12-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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the

sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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 the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall , at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the

legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 25.6. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 child 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 child 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 child 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 child. Physical custody of the child by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child 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 child 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 child, 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 child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child 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 child 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 child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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 social worker shall prepare a report which discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

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 child.

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 child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification

services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker 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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child'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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.25 or 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents since the time of placement.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

(j) This section shall become operative January 1, 1999.

SEC. 25.7. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 from the date the child entered foster care.

(2) For a child 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 from the date the child entered foster care.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The

court shall extend the time period only if it finds that there is a substantial probability that the child 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 child 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 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 366.26 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child 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 child, 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 child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child

willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child 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 child 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 child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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 social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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 child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) 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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 12-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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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 the 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, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 26. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a child is adjudged a dependent child of the court on the ground that the child is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the child. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the child.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the child is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, the court's determination shall be limited to whether the agency has complied with that chapter.

(b) When a child is adjudged a dependent child of the court, on the ground that the child is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the child subject to the supervision of the social worker, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the child who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer. That order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district,

or other appropriate agency designated by the court. A foster parent or relative with whom the child is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the child is a person described by Section 300.

SEC. 27. Section 362.5 of the Welfare and Institutions Code is repealed.

SEC. 28. Section 362.8 of the Welfare and Institutions Code is amended to read:

362.8. Before a child is placed with a nonrelative extended family member, the following requirements must be met:

(a) The county shall conduct an investigation of the nonrelative extended family members, and all adults residing in the home, which shall include at least the following, and which shall be submitted to the court with any request for a placement under this section:

(1) A home study.

(2) A child abuse index clearance.

(3) A determination that the nonrelative extended family member has the capacity to provide care and supervision for the child.

(4) A written certification by the social worker that the home meets the health and safety needs of the child.

(5) Submission of a proposed plan for the supervision of the child in the nonrelative extended family home.

(6) A criminal background check from an appropriate law enforcement agency to determine whether the nonrelative extended family member and all other adults residing in the home have ever been convicted of a crime other than a minor traffic violation. If no criminal record information has been located, the county shall provide the court with a statement of that fact.

(7) Submission for a fingerprint clearance. Within 30 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the county of the criminal record information, as provided for in paragraph (6). The criminal history information shall include the full criminal record of those persons, if any. If no criminal record information has been recorded, the Department of Justice shall provide the county with a statement of that fact within 15 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 15 calendar days from the date of receipt of the fingerprints, notify the county that the fingerprints were illegible.

(b) The court shall:

(1) Ensure that counsel is appointed for the child pursuant to Section 317 and is present at any hearing at which a determination of placement is made.

(2) Determine that the nonrelative extended family member or members are persons of good moral character.

(3) Adopt a plan for the supervision of the child subject to placement by the social worker or by any other public agency organized to provide care for needy or neglected children. No placement may be made under this section until the court determines it can provide appropriate supervision of children as specified under this section.

(4) Determine that placement of the child with this nonrelative extended family member is in the best interests of the child.

(5) After review of all records provided by the county, consideration of the bond between the child and the nonrelative extended family member, and consideration of any criminal history, make the placement that is in the best interests of the child. For purposes of this section the best interests of the child shall be deemed to preclude any placement that would be prohibited by Section 1522 of the Health and Safety Code, as it relates to placement with persons convicted of certain crimes. When considering any criminal history, the court shall consider the age at which a conviction occurred, the seriousness of the conviction, the frequency of convictions, and the length of time since a conviction.

(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. 29. Section 364 of the Welfare and Institutions Code is amended to read:

364. (a) Every hearing in which an order is made placing a child under the supervision of the juvenile court pursuant to Section 300 and in which the child is not removed from the physical custody of his or her parent or guardian shall be continued to a specific future date not to exceed six months after the date of the original dispositional hearing. The continued hearing shall be placed on the appearance calendar. The court shall advise all persons present of the date of the future hearings, of their rights to be present, and to be represented by counsel.

(b) At least 10 calendar days prior to the hearing, the social worker shall file a supplemental report with the court describing the services offered to the family and the progress made by the family in eliminating the conditions or factors requiring court supervision. The social worker shall also make a recommendation regarding the necessity of continued supervision. A copy of this report shall be furnished to all parties at least 10 calendar days prior to the hearing.

(c) After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of

jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn. Failure of the parent or guardian to participate regularly in any court ordered treatment program shall constitute prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary.

(d) If the court retains jurisdiction it shall continue the matter to a specified date, not more than six months from the time of the hearing, at which point the court shall again follow the procedure specified in subdivision (c).

(e) In any case in which the court has ordered that a parent or guardian shall retain physical custody of a child subject to supervision by a social worker, and the social worker subsequently receives a report of acts or circumstances which indicate that there is reasonable cause to believe that the child is a person described in subdivision (a), (d), or (e) of Section 300, the social worker shall commence proceedings under this chapter. If, as a result of the proceedings required, the court finds that the child is a person described in subdivision (a), (d), or (e) of Section 300, the court shall remove the child from the care, custody, and control of the child's parent or guardian and shall commit the child to the care, custody, and control of the social worker pursuant to Section 361.

SEC. 30. Section 365 of the Welfare and Institutions Code is amended to read:

365. The court may require the social worker or any other agency to render any periodic reports concerning children committed to its care, custody, and control under the provisions of Section 362 that the court deems necessary or desirable. The court may require that the social worker, or any other public agency organized to provide care for needy or neglected children, shall perform the visitation and make periodic reports to the courts concerning children committed under those provisions that the court deems necessary or desirable.

SEC. 31. Section 366.1 of the Welfare and Institutions Code is amended to read:

366.1. Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered those services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child is recommended to the court by the county welfare department or social worker.

(c) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(d) What actions, if any, have been taken by the parent to correct the problems which caused the child to be made a dependent child of the court.

SEC. 31.5. Section 366.1 of the Welfare and Institutions Code is amended to read:

366.1. Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered those services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for the return and maintenance of the child in a safe home is recommended to the court by the county welfare department social worker.

(c) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(d) What actions, if any, have been taken by the parent to correct the problems that caused the child to be made a dependent child of the court.

SEC. 32. Section 366.2 of the Welfare and Institutions Code is repealed.

SEC. 33. Section 366.21 of the Welfare and Institutions Code, as amended by Section 21 of Chapter 793 of the Statutes of 1997, is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child

being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable them to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both,

demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and a

child is not returned to the custody of a parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or guardian. The court shall inform the parent or guardian that if the child cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the child is not a proper subject for adoption and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents or guardians.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents since the time of placement.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(j) This section shall apply to children made dependents of the court pursuant to subdivision (c) of Section 360.

(k) This section shall become operative January 1, 1999.

SEC. 33.5. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social

Services when it is acting as an adoption agency or by a licensed adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to

the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the

whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he

or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court

shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents or guardians.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis,

"extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(j) This section shall apply to children made dependents of the court pursuant to subdivision (c) of Section 360.

SEC. 33.6. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all

hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable them to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing his or her recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, the foster parent may file with the court a report containing its recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a)

of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and the child is not returned to the custody of his or her parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or guardian. The court shall inform the parent or guardian that if the child cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the child is not a proper subject for adoption and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents or guardians.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents since the time of placement.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 33.7. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on

those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing his or her recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an

adoption agency or by a licensed adoption agency, the foster parent, the relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that

the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian in overcoming the problems that led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian

to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and the child is not returned to the custody of his or her parent or guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian.

For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents or guardians.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 34. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it that the child is not a proper subject for adoption and has no one willing to accept legal guardianship, the court may order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the child and his or her parents or other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(c) This section shall become operative January 1, 1999.

SEC. 34.5. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or guardian. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its

determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

SEC. 34.6. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, that the child is not a proper subject for adoption and has no one willing to accept legal guardianship, the court may order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents or other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(c) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 34.7. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or guardian. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he

or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis,

"extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(c) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 35. Section 366.25 of the Welfare and Institutions Code is repealed.

SEC. 36. Section 366.26 of the Welfare and Institutions Code, as amended by Section 26 of Chapter 793 of the Statutes of 1997, is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of

that section. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the child and issue letters of guardianship.

(4) Order that the child be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the child will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph 1 of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, pursuant to Section 366.21 or 366.22, that a child cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds that termination would be detrimental to the child due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, which do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the sibling is, or should be, permanently placed together.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the interest of the child because one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the

present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of that transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency

plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of that petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making that order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) This section shall be operative January 1, 1999.

SEC. 36.5. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with

Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 90 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the regular review of the juvenile court.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) The court shall conduct the hearing as follows:

(1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a pre-adoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under to subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months, that the parent has failed to visit or contact the child for six months, or that the parent has been convicted of a felony indicating parental

unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds that termination of parental rights would be detrimental to the child because of one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, which do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), or (D), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in

Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the best interests of the child, because one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of that transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanency plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of that petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the

court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given

preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

(m) This section shall be operative January 1, 1999.

SEC. 36.6. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child for a period not to exceed 90 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the child and issue letters of guardianship.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the child will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5

that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, pursuant to Section 366.21 or 366.22, that a child cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the sibling is, or should be, permanently placed together.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child for a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 90-day period, the public agency shall conduct the search for

adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the interest of the child, because one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of that petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the

court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making such an order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given

preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

SEC. 36.7. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent of the juvenile court.

(b) At the hearing, which shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 90 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) The court shall conduct the hearing as follows:

(1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for

adoption. The fact that the child is not yet placed in a pre-adoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months, that the parent has failed to visit or contact the child for six months, or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination of parental rights would be detrimental to the child because of one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), or (D), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for

adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 90 days. During this 90-day period, the public agency responsible for seeking adoptive parents, for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 90-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the best interests of the child because one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of that transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the

agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of that petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making that order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State

Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

SEC. 37. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. The court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship established pursuant to Section 360 or 366.26 and as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make

any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department or probation department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence that the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 37.1. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed

every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. The court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship established pursuant to Section 360 or 366.26 and as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to

determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child

to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 37.2. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. The court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship established pursuant to Section 360 or 366.26 and as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department or probation department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been terminated, the status of the

child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. However, the court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, or 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

(e) Except as provided in subdivision (f), at the review held at least every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held for a child in long-term foster placement and for whom 12 months have elapsed since a hearing at which the child was ordered into long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence that the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 37.3. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal

guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following the establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the minor and the minor has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan that shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has

been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interest of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department or probation department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a

child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interest of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence that the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 37.4. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. The court may continue jurisdiction over the child as a

dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship established pursuant to Section 360 or 366.26 and as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall

direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been terminated, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. However, the court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, or 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

(e) Except as provided in subdivision (f), at the review held at least every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child

to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held for a child in long-term foster placement and for whom 12 months have elapsed since a hearing at which the child was ordered into long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the

State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 37.5. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following the establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the minor and the minor has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to

the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, that shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interest of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interest of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care.

The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 37.6. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following the establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship , as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a

report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, that shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interest of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department or probation department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been terminated, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or

an appropriate local agency. However, the court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, or 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

(e) Except as provided in subdivision (f), at the review held at least every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interest of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held for a child in long-term foster placement and for whom 12 months have elapsed since a hearing at which the child was ordered into long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence that the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 37.7. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following the establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child

of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The

court may, if it is in the best interest of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been terminated, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. However, the court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, or 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

(e) Except as provided in subdivision (f), at the review held at least every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interest of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held for a child in long-term foster placement and for whom 12 months have elapsed since a hearing at which the child was ordered into long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care.

The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that

there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (g), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 38. Section 367 of the Welfare and Institutions Code is amended to read:

367. (a) Whenever a person has been adjudged a dependent child of the juvenile court and has been committed or otherwise disposed of as provided in this chapter for the care of dependent children of the juvenile court, the court may order that said dependent child be detained in a suitable place designated as the court seems fit until the execution of the order of commitment or of other disposition.

(b) In any case in which a child is detained for more than 15 days pending the execution of the order of commitment or of any other disposition, the court shall periodically review the case to determine whether the delay is reasonable. These periodic reviews shall be held at least every 15 days, commencing from the time the child was initially detained pending the execution of the order of commitment or of any other disposition, and during the course of each review the court shall inquire regarding the action taken by the social worker to carry out its order, the reasons for the delay, and the effect of the delay upon the child.

SEC. 39. Section 368 of the Welfare and Institutions Code is amended to read:

368. In a case where the residence of a dependent child of the juvenile court is out of the state and in another state or foreign country, or in a case where that child is a resident of this state but his or her parents, relatives, guardian, or person charged with his or her custody is in another state, the court may order that child sent to his or her parents, relatives, or guardian, or to the person charged with

his or her custody, or, if the child is a resident of a foreign country, to an official of a juvenile court of that foreign country or an agency of a country authorized to accept the child, and in that case may order transportation and accommodation furnished, with or without an attendant, as the court deems necessary. If the court deems an attendant necessary, the court may order the social worker or other suitable person to serve as the attendant. The social worker shall authorize the necessary expenses of the child and of the attendant and claims therefor shall be audited, allowed and paid in the same manner as other county claims.

SEC. 40. Section 369 of the Welfare and Institutions Code is amended to read:

369. (a) Whenever any person is taken into temporary custody under Article 7 (commencing with Section 305) and is in need of medical, surgical, dental, or other remedial care, the social worker may, upon the recommendation of the attending physician and surgeon or, if the person needs dental care and there is an attending dentist, the attending dentist, authorize the performance of the medical, surgical, dental, or other remedial care. The social worker shall notify the parent, guardian, or person standing in loco parentis of the person, if any, of the care found to be needed before that care is provided, and if the parent, guardian, or person standing in loco parentis objects, that care shall be given only upon order of the court in the exercise of its discretion.

(b) Whenever it appears to the juvenile court that any person concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize the remedial care or treatment for that person, the court, upon the written recommendation of a licensed physician and surgeon or, if the person needs dental care, a licensed dentist, and after due notice to the parent, guardian, or person standing in loco parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for that person.

(c) Whenever a dependent child of the juvenile court is placed by order of the court within the care and custody or under the supervision of a social worker of the county in which the dependent child resides and it appears to the court that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the dependent child, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the social worker may authorize the medical, surgical, dental, or other remedial care for the dependent child, by licensed practitioners, as may from time to time appear necessary.

(d) Whenever it appears that a child otherwise within subdivision (a), (b), or (c) requires immediate emergency medical, surgical, or

other remedial care in an emergency situation, that care may be provided by a licensed physician and surgeon or, if the child needs dental care in an emergency situation, by a licensed dentist, without a court order and upon authorization of a social worker. The social worker shall make reasonable efforts to obtain the consent of, or to notify, the parent, guardian, or person standing in loco parentis prior to authorizing emergency medical, surgical, dental, or other remedial care. "Emergency situation," for the purposes of this subdivision means a child requires immediate treatment for the alleviation of severe pain or an immediate diagnosis and treatment of an unforeseeable medical, surgical, dental, or other remedial condition or contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death.

(e) In any case in which the court orders the performance of any medical, surgical, dental, or other remedial care pursuant to this section, the court may also make an order authorizing the release of information concerning that care to social workers, parole officers, or any other qualified individuals or agencies caring for or acting in the interest and welfare of the child under order, commitment, or approval of the court.

(f) Nothing in this section shall be construed as limiting the right of a parent, guardian, or person standing in loco parentis, who has not been deprived of the custody or control of the child by order of the court, in providing any medical, surgical, dental, or other remedial treatment recognized or permitted under the laws of this state.

(g) The parent of any person described in this section may authorize the performance of medical, surgical, dental, or other remedial care provided for in this section notwithstanding his or her age or marital status. In nonemergency situations the parent authorizing the care shall notify the other parent prior to the administration of that care.

SEC. 41. Section 370 of the Welfare and Institutions Code is amended to read:

370. The juvenile court may, in any case before it in which a petition has been filed as provided in Article 7 (commencing with Section 305), order that the social worker obtain the services of those psychiatrists, psychologists, or other clinical experts as may be required to assist in determining the appropriate treatment of the child and as may be required in the conduct or implementation of that treatment. Payment for those services shall be a charge against the county.

SEC. 42. Section 380 of the Welfare and Institutions Code is amended to read:

380. Any person adjudged to be a dependent child of the juvenile court may be permitted by order of the court to reside in a county other than the county of his or her legal residence, and the court shall retain jurisdiction over that person.

Whenever a dependent child of the juvenile court is permitted to reside in a county other than the county of his or her legal residence, he or she may be placed under the supervision of the social worker of the county of actual residence, with the consent of the social worker. The dependent child shall comply with the instructions of the social worker and upon failure to do so shall be returned to the county of his or her legal residence for further hearing and order of the court.

SEC. 43. Section 386 of the Welfare and Institutions Code is amended to read:

386. No order changing, modifying, or setting aside a previous order of the juvenile court shall be made either in chambers, or otherwise, unless prior notice of the application therefor has been given by the judge or the clerk of the court to the social worker and to the child's counsel of record, or, if there is no counsel of record, to the child and his or her parent or guardian.

SEC. 44. Section 387 of the Welfare and Institutions Code is amended to read:

387. An order changing or modifying a previous order by removing a child from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition.

(a) The supplemental petition shall be filed by the social worker in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child or, in the case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.

(b) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the social worker shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 335 and 337.

(c) An order for the detention of the child pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 7 (commencing with Section 305).

SEC. 45. Section 9.5 of this bill incorporates amendments to Section 319 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 319 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2773, in which case Section 9 of this bill shall not become operative.

SEC. 46. Section 21.5 of this bill incorporates amendments to Section 358.1 of the Welfare and Institutions Code proposed by both this bill and AB 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 358.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1988, in which case Section 21 of this bill shall not become operative.

SEC. 47. (a) Section 25.5 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 361.5 of the Welfare and Institutions Code, (3) SB 2091 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2773 in which case Sections 25, 25.6, and 25.7 of this bill shall not become operative.

(b) Section 25.6 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and SB 2091. 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 361.5 of the Welfare and Institutions Code, (3) AB 2773 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2091, in which case Sections 25, 25.5, and 25.7 of this bill shall not become operative.

(c) Section 25.7 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by this bill, AB 2773, and SB 2091. 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 361.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2773, and SB 2091, in which case Sections 25, 25.5, and 25.6 of this bill shall not become operative.

SEC. 48. Section 31.5 of this bill incorporates amendments to Section 366.1 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 366.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2773, in which case Section 31 of this bill shall not become operative.

SEC. 49. (a) Section 33.5 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 366.21 of the Welfare and Institutions Code, (3) SB 1901 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2773, in which case Sections 33, 33.6, and 33.7 of this bill shall not become operative.

(b) Section 33.6 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and SB 1901. 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 366.21 of the Welfare and Institutions Code, (3) AB 2773 is not enacted or as enacted does not amend that section, and

(4) this bill is enacted after SB 1901, in which case Sections 33, 33.5, and 33.7 of this bill shall not become operative.

(c) Section 33.7 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by this bill, AB 2773, and SB 1901. 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 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2773 and SB 1901, in which case Sections 33, 33.5, and 33.6 of this bill shall not become operative.

SEC. 50. (a) Section 34.5 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 366.22 of the Welfare and Institutions Code, (3) SB 1901 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2773, in which case Sections 34, 34.6, and 34.7 of this bill shall not become operative.

(b) Section 34.6 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by both this bill and SB 1901. 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 366.22 of the Welfare and Institutions Code, (3) AB 2773 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1901, in which case Sections 34, 34.5, and 34.7 of this bill shall not become operative.

(c) Section 34.7 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by this bill, AB 2773, and SB 1901. 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 366.22 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2773 and SB 1901, in which case Sections 34, 34.5, and 34.6 of this bill shall not become operative.

SEC. 51. (a) Section 36.5 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 2310. 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 366.26 of the Welfare and Institutions Code, (3) AB 2773 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2310, in which case Sections 36, 36.6, and 36.7 of this bill shall not become operative.

(b) Section 36.6 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 366.26 of the Welfare and Institutions Code, (3) AB 2310 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2773, in which case Sections 36, 36.5, and 36.7 of this bill shall not become operative.

(c) Section 36.7 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by this bill, AB 2310, and AB 2773. 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 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2310 and AB 2773, in which case Sections 36, 36.5, and 36.6 of this bill shall not become operative.

SEC. 52. (a) Section 37.1 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 366.3 of the Welfare and Institutions Code, (3) SB 1482 and SB 1901 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after AB 2773, in which case Sections 37, 37.2, 37.3, 37.4, 37.5, 37.6, and 37.7 of this bill shall not become operative.

(b) Section 37.2 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and SB 1482. 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 366.3 of the Welfare and Institutions Code, (3) AB 2773 and SB 1901 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 1482, in which case Sections 37, 37.1, 37.3, 37.4, 37.5, 37.6, and 37.7 of this bill shall not become operative.

(c) Section 37.3 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and SB 1901. 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 366.3 of the Welfare and Institutions Code, (3) AB 2773 and SB 1482 are not enacted or as enacted do not amend that section, and (4) this bill is enacted after SB 1901, in which case Sections 37, 37.1, 37.2, 37.4, 37.5, 37.6, and 37.7 of this bill shall not become operative.

(d) Section 37.4 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by this bill, AB 2773, and SB 1482. 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 366.3 of the Welfare and Institutions Code, (3) SB 1901 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2310 and SB 1482, in which case Sections 37, 37.1, 37.2, 37.3, 37.5, 37.6, and 37.7 of this bill shall not become operative.

(e) Section 37.5 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by this bill, AB 2773, and SB 1901. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 366.3 of the Welfare and Institutions Code,

(3) SB 1482 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2773 and SB 1902, in which case Sections 37, 37.1, 37.2, 37.3, 37.4, 37.6, and 37.7 of this bill shall not become operative.

(f) Section 37.6 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by this bill, SB 1482, and SB 1901. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 366.3 of the Welfare and Institutions Code, (3) AB 2773 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1482 and SB 1901, in which case Sections 37, 37.1, 37.2, 37.3, 37.4, 37.5, and 37.7 of this bill shall not become operative.

(g) Section 37.7 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by this bill, AB 2773, SB 1482, and SB 1901. It shall only become operative if (1) all four bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 366.3 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2773, SB 1482, and SB 1901, in which case Sections 37, 37.1, 37.2, 37.3, 37.4, 37.5, and 37.6 of this bill shall not become operative.

CHAPTER 1055

An act to amend Sections 361.5, 366.21, 366.22, 366.3, and 15200 of, and to add Article 4.5 (commencing with Section 11360) to Chapter 2 of Part 3 of Division 9 of, the Welfare and Institutions Code, relating to guardianship, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to do all of the following:

(a) Promote family preservation and the stability of the lives of victims of abuse and neglect.

(b) Reduce the financial barriers that confront relatives who wish to care for victims of abuse and neglect.

(c) Facilitate the reduced involvement of child welfare services when it is deemed in the best interest of the child.

(d) Promote previously established policies, such as kinship adoptions, and facilitate kinship (relative) guardianships, that are an integral and necessary component toward establishing a Kinship Care Program that is separate and distinct from the existing foster care program and that will result in cost efficiencies to all public

funds used to manage and service foster care cases. If Assembly Bill 2779 of the 1997–98 Regular Session is enacted, the Department of Social Services shall complete its plan to implement a Kinship Care Program pursuant to that act by March 1, 1999, and shall establish and implement a Kinship Guardianship Assistance Payment (Kin-GAP) program and rate by July 1, 1999.

SEC. 2. 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 366.26 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 that 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 that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a minor 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 of the child 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 that 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.

(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 that 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), or (13) 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 that 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.

(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 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), or (13) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 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 366.26, 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 that are not served by a county adoption agency, to prepare an assessment that 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, development, 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. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great,"

"great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(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.

SEC. 2.1. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 child 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 child 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 child 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 child. Physical custody of the child by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. If at the end of the 18-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the minor's desire into account in devising a permanency plan.

In cases where the child 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 366.26 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child 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 child 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 child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 that if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child from that parent or guardian.

(11) That the parent or guardian of the child 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 child 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 child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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 child or that failure to try reunification will be detrimental to the child because the minor is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of

the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child'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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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), or (13) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall conduct a hearing pursuant to Section 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents since the time of placement.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 18 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 2.2. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 from the date the child entered foster care.

(2) For a child 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 from the date the child entered foster care. Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian. Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the

extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child 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 child 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 and subdivision (e) of Section 358.1. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 366.26 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child 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 child, 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 child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 that if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child

willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child from that parent or guardian.

(11) That the parent or guardian of the child 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 child 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 that brought that child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant

to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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 child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services

are subject to the 12-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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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 the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, development, 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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 2.3. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 from the date the child entered foster care.

(2) For a child 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 from the date the child entered foster care. Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or parent or guardian. Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child 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 child 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 and subdivision (e) of Section 358.1. When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 366.26 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been

taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child 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 child, 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 child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 that if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child from that parent or guardian.

(11) That the parent or guardian of the child 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 child 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 that brought that child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health

professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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 child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 12-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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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 the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis,

"extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 3. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable them to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the minor to a parent or guardian, the report shall specify why the return of the minor would be detrimental to the minor. The probation officer shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a minor removed from the physical custody of his or her parent or guardian, the probation officer shall provide a summary of his or her recommendation for disposition to the counsel for the minor, any court-appointed child advocate, foster

parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to a hearing involving a minor in the physical custody of a foster parent, the foster parent may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the minor is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the minor to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the minor cannot be returned home by

the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the minor was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the minor, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

If the minor was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the minor, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the minor is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian in overcoming the problems that led to the initial removal and the continued custody of the minor. The court shall order that those services be initiated, continued, or terminated.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its

determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and the minor is not returned to the custody of his or her parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the minor was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or guardian. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the minor and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(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.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the child with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 3.1. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable them to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a

parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, the foster parent may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the next review hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian in overcoming the problems that led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the child to

the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and the child is not returned to the custody of his or her parent or guardian at the hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian within six months or that reasonable services have not been provided to the parent or guardian. The court shall inform the parent or guardian that if the child cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Section 366.26 be

held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the child is not a proper subject for adoption and has no one willing to accept legal guardianship.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents or guardians.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents since the time of placement.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(j) If, at the hearing held pursuant to Section 366.26, a guardianship is established for the child with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 3.2. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative care givers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed

adoption agency shall indicate that the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative care givers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative care giver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court

finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed

to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian in overcoming the problems that led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and the child is not returned to the custody of his or her parent or guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held

unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the child with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 3.3. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative care givers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing

was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative care giver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative care givers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative care giver,

or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, the relative care giver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian in overcoming the problems that led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine

whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and the child is not returned to the custody of his or her parent or guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian.

For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home

within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents or guardians.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to

permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the child with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 4. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the minor to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the minor to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the minor. The probation officer shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the probation officer's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the minor is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the minor is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, that the minor is not a proper subject for adoption and has no one willing to accept legal guardianship, the court may order that the minor remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the

minor. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that shall include:

(1) Current search efforts for an absent parent or parents.

(2) A review of the amount of and nature of any contact between the minor and his or her parents or other members of his or her extended family since the time of placement. Although the extended family of each minor shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the minor's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(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.

(c) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the child with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great,"

"great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 4.1. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the court, at the 18-month hearing, shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the 18-month hearing, the court shall develop a permanent plan. The court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, that the child is not a proper subject for adoption and has no one willing to accept legal guardianship, the court may order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the 18-month hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child

unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents or other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(c) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the child with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great,"

"great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 4.2. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or guardian. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining

that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(c) If at any hearing held pursuant to Section 366.26, a guardianship is established for the child with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 4.3. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or guardian. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the child, and the relative was assessed for foster care placement of the child prior to January 1, 1999, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(c) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the child with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 5. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360, 366.25, or 366.26, the court shall retain jurisdiction over the minor until the minor is adopted or the legal guardianship is established. The status of the minor shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the minor has been granted, the court shall terminate its jurisdiction over the minor. Following the establishment of a legal guardianship, the court may continue jurisdiction over the minor as a dependent minor of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the minor is appointed the legal guardian of the minor and the minor has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the minor.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this

fact. The court may vacate its previous order dismissing dependency jurisdiction over the minor.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship that has been granted pursuant to Section 360, 366.25, or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the minor. Prior to the hearing on a petition filed by the guardian to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services.

If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the minor, and may order the county department of social services or welfare department to develop a new permanent plan that shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the probation officer shall make any investigation he or she deems necessary to determine whether the minor may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the minor in another permanent placement. At the hearing, the parents may be considered as custodians but the minor shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the minor. The court may, if it is in the best interest of the minor, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department or probation department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the minor and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the minor. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption

agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the minor is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the minor shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the minor's parents or guardians.

(2) Upon the request of the minor.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the minor and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

Unless their parental rights have been permanently terminated, the parent or parents of the minor are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interest of the minor, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the minor. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child, including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in foster care. The court shall order

that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence that the minor is not a proper subject for adoption or that there is no one willing to accept legal guardianship. Only upon that determination may the court order that the minor remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor.

SEC. 5.1. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following the establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of a child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition filed by the guardian to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan that shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interest of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department or probation department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the

child shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child. The review shall also include a determination of the services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interest of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence that the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. Only upon that determination may the court order

that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the department when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 5.2. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of a child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition filed by the guardian to

terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interest of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interest of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care.

The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only

upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 5.3. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following the establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of a child is appointed the legal guardian of the minor and the minor has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights, the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship that has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the

child. Prior to the hearing on a petition filed by the guardian to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, that shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interest of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interest of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care.

The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall

constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 6. Article 4.5 (commencing with Section 11360) is added to Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, to read:

Article 4.5. Kinship Guardianship Assistance Payment Program

11360. The department shall establish a Kinship Guardianship Assistance Payment Program as specified by this article.

11361. The Legislature finds and declares that the Kinship Guardianship Assistance Payment Program is intended to enhance family preservation and stability by recognizing that many children are in long-term, stable placements with relatives, that these placements are the permanent plan for the child, that dependencies can be dismissed pursuant to Section 366.3 with legal guardianship granted to the relative, and that there is no need for continued governmental intervention in the family life through ongoing, scheduled court and social services supervision of the placement.

11362. For purposes of this article, the following definitions shall apply:

(a) "Kinship Guardianship Assistance Payments (Kin-GAP)" means the aid provided on behalf of children in kinship care under the terms of this article.

(b) "Kinship guardian" means a person who (1) has been appointed the legal guardian of a dependent child pursuant to Section 366.26 and (2) is a relative of the child.

(c) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand" or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

11363. (a) Aid in the form of Kin-GAP shall be provided under this article on behalf of any child under 18 years of age who has been

adjudged a dependent child of the juvenile court pursuant to Section 300 and for whom a guardianship with a kinship guardian has been established as the result of the implementation of a permanent plan pursuant to Section 366.26. Kin-GAP payments shall continue after the child's 18th birthday if the conditions specified in Section 11403 are met.

(b) Termination of the guardianship with a kinship guardian shall terminate eligibility for Kin-GAP; provided, however, that if a successor guardian is appointed who is also a kinship guardian, the successor guardian shall be entitled to receive Kin-GAP on behalf of the child pursuant to this article.

11364. (a) The department shall establish, in collaboration with the County Welfare Directors Association, the California Partnership for Children, the California State Association of Counties, and other key representatives identified by the department and the California Partnership for Children, the payment rate for Kin-GAP on or before July 1, 1999, which rate shall not exceed 85 percent of the AFDC-FC payment rate.

(b) The Kin-GAP rate, once established, shall be applied uniformly statewide and shall not be adjusted based on the age of the child, the location or region of the state where the child resides, or any other factors.

(c) The Kin-GAP rate shall be adjusted annually by the percentage changes in the California Necessities Index, computed pursuant to the methodology described in Section 11453, subject to the availability of funds.

11365. Kin-GAP shall be paid to the kinship guardian on a per child basis.

11366. A child who is eligible to receive Medi-Cal benefits with no share of cost shall maintain that eligibility notwithstanding the receipt of Kin-GAP by his or her kinship guardian.

11367. (a) Kin-GAP, in an amount equal to the then current Kin-GAP rate, shall be paid utilizing the applicable regional per-child CalWORKs grant from federal funds received as a part of the TANF block grant program grant. The balance of Kin-GAP shall be paid in equal portions by the state and the counties.

(b) The department shall seek any federal funds available for implementation of this article, including, but not limited to, funds available under Title IV of the federal Social Security Act (42 U.S.C. Sec. 601 et seq.). Implementation of the Kin-GAP program shall not, however, be contingent upon receipt of any federal funding.

(c) Any savings that accrue to the department as a result of this article shall revert to the General Fund. Savings that accrue to a county shall accrue to that county's social services subaccount in its local health and welfare trust fund.

11368. (a) The department shall seek any waiver from the Secretary of the United States Department of Health and Human Services that is necessary to implement this article.

(b) Any provision of this article that may only be implemented pursuant to a waiver described in subdivision (a) shall only be operative during the period for which the waiver is granted, as stated in a declaration that shall be executed by the director when the waiver is obtained.

11369. The department shall adopt regulations, as otherwise necessary, to implement the provisions of this article. Emergency regulations to implement the provisions of this article may be adopted by the department in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of these regulations shall be deemed an emergency and necessary for the immediate regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare.

11370. The provisions of this article shall become operative on July 1, 1999.

SEC. 7. Section 15200 of the Welfare and Institutions Code, as amended by Section 33 of Chapter 606 of the Statutes of 1997, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting available federal funds, the following sums:

(a) To each county for the support and maintenance of needy children, 95 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e) of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 95 percent of the sums specified in subdivisions (b) and (c) of Section 11450.

(c) To each county for the support and maintenance of needy children, 40 percent of the sum necessary for the adequate care of each child pursuant to subdivision (d) of Section 11450.

(d) Notwithstanding subdivision (c), the amount of funds appropriated from the General Fund in the annual Budget Act that equates to the amount claimed under the Emergency Assistance Program that has been included in the state's Temporary Assistance for Needy Families block grant for foster care maintenance payments shall be considered federal funds for the purposes of calculating the county share of cost, provided the expenditure of these funds contributes to the state meeting its federal maintenance of effort requirements.

(e) To each county for the support and care of hard-to-place adoptive children, 75 percent of the nonfederal share of the amount specified in Section 16121.

(f) To each county for the support and care of former dependent children who have been made wards of related guardians, an amount equal to 50 percent of the Kin-GAP payment under Article 4.5

(commencing with Section 11360) of Chapter 2 minus the federal TANF block grant contribution specified in Section 11364.

(g) This section shall remain in effect only until July 1, 1995, or until two years after the implementation of the Child Welfare Services Case Management System as specified in Section 16501.5, whichever occurs last, and as of that date is repealed, unless a later enacted statute which is chaptered before July 1, 1990, or two years after the implementation of the Child Welfare Services Case Management System, deletes or extends that date.

SEC. 8. Section 15200 of the Welfare and Institutions Code, as amended by Section 34 of Chapter 606 of the Statutes of 1997, is amended to read:

15200. There is hereby appropriated out of any money in the State Treasury not otherwise appropriated, and after deducting federal funds available, the following sums:

(a) To each county for the support and maintenance of needy children, 95 percent of the sums specified in subdivision (a), and paragraphs (1) and (2) of subdivision (e), of Section 11450.

(b) To each county for the support and maintenance of pregnant mothers, 95 percent of the sum specified in subdivisions (b) and (c) of Section 11450.

(c) For the adequate care of each child pursuant to subdivision (d) of Section 11450, as follows:

(1) For any county that meets the performance standards or outcome measures in Section 11215, an amount equal to 40 percent of the sum necessary for the adequate care of each child.

(2) For any county that does not meet the performance standards or outcome measures in Section 11215, an amount which shall not be less than 67.5 percent of one hundred twenty dollars ($120), and multiplied by the number of children receiving foster care in the county, added to an additional twelve dollars and fifty cents ($12.50) a month per eligible child.

(3) The department shall determine the percentage of state reimbursement for those counties that fail to meet the requirements of subparagraph (1) according to the regulations required by subdivision (b) of Section 11215.

(d) Notwithstanding subdivision (c), the amount of funds appropriated from the General Fund in the annual Budget Act that equates to the amount claimed under the Emergency Assistance Program that has been included in the state's Temporary Assistance for Needy Families block grant for foster care maintenance payments shall be considered federal funds for the purposes of calculating the county share of cost, provided the expenditure of these funds contributes to the state meeting its federal maintenance of effort requirements.

(e) To each county for the support and care of hard-to-place adoptive children, 75 percent of the nonfederal share of the amount specified in Section 16121.

(f) The State Department of Social Services shall not implement any change in the current funding ratios to counties as a reimbursement for out-of-home care placement until the development of a new performance standard system. The State Department of Social Services shall notify the Department of Finance when the new performance standard system is developed and ready for implementation. The Department of Finance, pursuant to the provisions of Section 28 of the Budget Act, shall notify the Joint Legislative Budget Committee in writing of its intent to implement a new performance standard that would impact the counties' funding allocation. The notification shall include the text of the draft regulations to implement the performance standards. Any adjustment in the county funding allocation shall not be implemented sooner than 60 days after receipt and review of the new performance standard by the Joint Legislative Budget Committee and a review of the proposed changes by the Legislative Analyst.

(g) To each county for the support and care of former dependent children who have been made wards of related guardians, an amount equal to 50 percent of the Kin-GAP payment under Article 4.5 (commencing with Section 11360) of Chapter 2 minus the federal TANF block grant contribution specified in Section 11364.

(h) This section shall become operative on July 1, 1995, unless the Child Welfare Services Case Management System is not implemented statewide July 1, 1993, as specified in Section 16501.5. If the Child Welfare Services Case Management System is implemented later than July 1, 1993, this section shall become operative two years after the implementation of the Child Welfare Services Case Management System.

SEC. 9. The Legislature finds and declares that this act provides for offsetting savings to local agencies based on a reduction in all of the following:

(a) Child welfare case management costs.

(b) Dependency court costs.

(c) Foster care payments.

(d) CalWORKs program payments for children placed with relatives.

SEC. 10. (a) Section 2.1 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 1091. 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 361.5 of the Welfare and Institutions Code, and (3) AB 2773 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1091, in which case Sections 2, 2.2, and 2.3 of this bill shall not become operative.

(b) Section 2.2 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 361.5 of the Welfare and Institutions Code, (3) AB 1091 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2773 in which case Sections 2, 2.1, and 2.3 of this bill shall not become operative.

(c) Section 2.3 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by this bill, AB 1091, and AB 2773. 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 361.5 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1091 and AB 2773, in which case Sections 2, 2.1, and 2.2 of this bill shall not become operative.

SEC. 11. (a) Section 3.1 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 1091. 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 366.21 of the Welfare and Institutions Code, and (3) AB 2773 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1091, in which case Sections 3, 3.2, and 3.3 of this bill shall not become operative.

(b) Section 3.2 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 366.21 of the Welfare and Institutions Code, (3) AB 1091 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2773 in which case Sections 3, 3.1, and 3.3 of this bill shall not become operative.

(c) Section 3.3 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by this bill, AB 1091, and AB 2773. 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 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1091 and AB 2773, in which case Sections 3, 3.1, and 3.2 of this bill shall not become operative.

SEC. 12. (a) Section 4.1 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by both this bill and AB 1091. 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 366.22 of the Welfare and Institutions Code, and (3) AB 2773 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1091, in which case Sections 4, 4.2, and 4.3 of this bill shall not become operative.

(b) Section 4.2 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 366.22 of the Welfare and Institutions Code, (3) AB 1091 is not enacted or as enacted does not amend that section, and

(4) this bill is enacted after AB 2773 in which case Sections 4, 4.1, and 4.3 of this bill shall not become operative.

(c) Section 4.3 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by this bill, AB 1091, and AB 2773. 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 366.22 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1091 and AB 2733, in which case Sections 4, 4.1, and 4.2 of this bill shall not become operative.

SEC. 13. (a) Section 5.1 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 1091. 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 366.3 of the Welfare and Institutions Code, and (3) AB 2773 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 1091, in which case Sections 5, 5.2, and 5.3 of this bill shall not become operative.

(b) Section 5.2 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 366.3 of the Welfare and Institutions Code, (3) AB 1091 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2773 in which case Sections 5, 5.1, and 5.3 of this bill shall not become operative.

(c) Section 5.3 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by this bill, AB 1091, and AB 2773. 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 366.3 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1091 and AB 2773, in which case Sections 5, 5.1, and 5.2 of this bill shall not become operative.

SEC. 14. 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 1056

An act to amend Sections 8700, 8707, 8708, and 8711 of, and to add Sections 8710.1, 8710.2, 8710.3, and 8710.4 to, the Family Code, to amend Sections 1505 and 1530.8 of, and to add Section 1502.6 to, the Health and Safety Code, and to amend Sections 319, 361.3, 361.5, 366, 366.1, 366.21, 366.22, 366.26, 366.3, 366.4, 10950, 11155.5, 11400, 11401, 11404.1, 11478.1, 16100, 16120, and 16501.1 of, and to add Sections 16131 and 16508.1 to, the Welfare and Institutions Code, relating to public social services, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 8700 of the Family Code is amended to read:

8700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child and acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A relinquishing parent who is a minor has the right to relinquish his or her child for adoption to the department or a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a relinquishing parent resides outside this state and the child is being cared for and is or will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent before a notary on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(d) If a relinquishing parent and child reside outside this state and the child will be cared for and will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent, after that parent has satisfied the following requirements:

(1) Prior to signing the relinquishment, the relinquishing parent shall have received, from a representative of an agency licensed or otherwise approved to provide adoption services under the laws of

the relinquishing parent's state of residence, the same counseling and advisement services as if the relinquishing parent resided in this state.

(2) The relinquishment shall be signed before a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence whenever possible or before a licensed social worker on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(e) The relinquishment authorized by this section has no effect until a certified copy is filed with the department. Upon filing with the department, the relinquishment is final and may be rescinded only by the mutual consent of the department or licensed adoption agency to which the child was relinquished and the birth parent or parents relinquishing the child.

(f) The relinquishing parent may name in the relinquishment the person or persons with whom he or she intends that placement of the child for adoption be made by the department or licensed adoption agency.

(g) Notwithstanding subdivision (e), if the relinquishment names the person or persons with whom placement by the department or licensed adoption agency is intended and the child is not placed in the home of the named person or persons or the child is removed from the home prior to the granting of the adoption, the department or agency shall mail a notice by certified mail, return receipt requested, to the birth parent signing the relinquishment within 72 hours of the decision not to place the child for adoption or the decision to remove the child from the home.

(h) The relinquishing parent has 30 days from the date on which the notice described in subdivision (g) was mailed to rescind the relinquishment.

(1) If the relinquishing parent requests rescission during the 30-day period, the department or licensed adoption agency shall rescind the relinquishment.

(2) If the relinquishing parent does not request rescission during the 30-day period, the department or licensed adoption agency shall select adoptive parents for the child.

(3) If the relinquishing parent and the department or licensed adoption agency wish to identify a different person or persons during the 30-day period with whom the child is intended to be placed, the initial relinquishment shall be rescinded and a new relinquishment identifying the person or persons completed.

(i) If the parent has relinquished a child, who has been found to come within Section 300 of the Welfare and Institutions Code or is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code, to the department

or a licensed adoption agency for the purpose of adoption, the department or agency accepting the relinquishment shall provide written notice of the relinquishment within five court days to all of the following:

(1) The juvenile court having jurisdiction of the child.

(2) The child's attorney, if any.

(3) The relinquishing parent's attorney, if any.

(j) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (g) and (h).

(k) The department shall adopt regulations to administer the provisions of this section.

SEC. 2. Section 8707 of the Family Code is amended to read:

8707. (a) The department shall establish a statewide photo-listing service to serve all licensed adoption agencies in the state as a means of recruiting adoptive families. The department shall adopt regulations governing the operations of the photo-listing service and shall establish procedures for monitoring compliance with this section.

(b) The photo-listing service shall maintain child specific information that, except as provided in this section, contains a photograph and description of each child who has been legally freed for adoption and whose case plan goal is adoption. Registration of children with the photo-listing service and notification by the licensed adoption agency of changes in a child's photo-listing status shall be reflected in the photo-listing service within 30 working days of receipt of the registration or notification.

(c) The photo-listing service shall be provided to all licensed adoption agencies, adoption support groups, and state, regional, and national photo-listings and exchanges requesting copies of the photo-listing service.

(d) All children legally freed for adoption whose case plan goal is adoption shall be photo-listed, unless deferred as provided in subdivision (e) or (f). Licensed adoption agencies shall send a recent photograph and description of each legally freed child to the photo-listing service within 15 working days of the time a child is legally freed for adoption. When adoption has become the case plan goal for a particular child, the licensed adoption agency may photo-list that child before the child becomes legally freed for adoption.

(e) A child shall be deferred from the photo-listing service when the child's foster parents or other identified individuals who have applied to adopt the child are meeting the licensed adoption agency's requests for required documentation and are cooperating in the completion of a home study being conducted by the agency.

(f) A child who is 12 years old or older may be deferred from the photo-listing service if the child does not consent to being adopted.

(g) Within 15 working days following a one-year period in which a child is listed in the photo-listing service, the licensed adoption agency shall submit a revised description and photograph of the child.

(h) Licensed adoption agencies shall notify the photo-listing service, by telephone, of any adoptive placements or of significant changes in a child's photo-listing status within two working days of the change.

(i) The department shall establish procedures for semiannual review of the photo-listing status of all legally freed children whose case plan goal is adoption, including those who are registered with the photo-listing service and those whose registration has been deferred.

SEC. 3. Section 8708 of the Family Code is amended to read:

8708. Neither the department nor a licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may do any of the following:

(a) Categorically deny to any person the opportunity to become an adoptive parent, solely on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(b) Delay or deny the placement of a child for adoption, or otherwise discriminate in making an adoptive placement decision, solely on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(c) Delay or deny the placement of a child for adoption solely because the prospective, approved adoptive family resides outside the jurisdiction of the department or the licensed adoption agency. For purposes of this subdivision, an approved adoptive family means a family approved pursuant to the California adoptive applicant assessment standards. If the adoptive applicant assessment was conducted in another state according to that state's standards, the California placing agency shall determine whether the standards of the other state substantially meet the standards and criteria established in California adoption regulations.

SEC. 3.1. Section 8708 of the Family Code is amended to read:

8708. Neither the department nor a licensed adoption agency to which a child has been freed for adoption by either relinquishment or termination of parental rights may do either of the following:

(a) Deny to any person the opportunity to become an adoptive parent on the basis of the race, color, or national origin of the person or the child involved.

(b) Delay or deny the placement of a child for adoption on the basis of the race, color, or national origin of the adoptive parent or the child involved.

(c) Delay or deny the placement of a child for adoption solely because the prospective, approved adoptive family resides outside the jurisdiction of the department or the licensed adoption agency. For purposes of this subdivision, an approved adoptive family means

a family approved pursuant to the California adoptive applicant assessment standards. If the adoptive applicant assessment was conducted in another state according to that state's standards, the California placing agency shall determine whether the standards of the other state substantially meet the standards and criteria established in California adoption regulations.

(d) The department shall adopt regulations to administer the provisions of this section.

SEC. 4. Section 8710.1 is added to the Family Code, to read:

8710.1. If there is not an adoptive placement plan for a child with an approved adoptive family, as defined in subdivision (c) of Section 8708, within the department's or the licensed adoption agency's jurisdiction, then the department or licensed adoption agency shall register the child with the exchange system described in Section 8710.2.

SEC. 5. Section 8710.2 is added to the Family Code, to read:

8710.2. In order to preclude the delays or denials described in subdivision (c) of Section 8708, the department shall establish a statewide exchange system that interjurisdictionally matches waiting children and approved adoptive families. The department may create a new statewide exchange system, modify an existing statewide exchange system, such as the photo-listing service described in Section 8707, or designate an existing exchange system, such as the Adoption Exchange Enhancement Program, as the statewide exchange system for purposes of this section.

SEC. 6. Section 8710.3 is added to the Family Code, to read:

8710.3. If the department or licensed adoption agency has approved a family for adoption pursuant to subdivision (c) of Section 8708 and that family may be appropriate for placement of a child who has been adjudged a dependent child of the juvenile court, the department or agency shall register the family with the statewide exchange system established pursuant to Section 8710.2, except in either of the following circumstances:

(a) The family refuses to consent to the registration.

(b) A specific child or children have already been identified for adoptive placement with the family.

SEC. 7. Section 8710.4 is added to the Family Code, to read:

8710.4. (a) The department shall ensure that information regarding families and children registered with the statewide exchange system described in Section 8710.2 is accessible by licensed adoption agency personnel throughout the state. Provision shall be made for secure Internet, telephone, and facsimile access by authorized licensed adoption agency personnel.

(b) Information regarding children maintained by the statewide exchange system described in Section 8710.2 shall be confidential and shall not be disclosed to any parties other than authorized adoption agency personnel, except when consent to disclosure has been

received in writing from the birth parents or the court that has jurisdiction.

SEC. 8. Section 8711 of the Family Code is amended to read:

8711. Sections 8708 to 8710.4, inclusive, apply only in determining the placement of a child who has been relinquished for adoption or has been declared free from the custody and control of the birth parents.

SEC. 8.5. Section 1502.6 is added to the Health and Safety Code, to read:

1502.6. The department shall deny a private adoption agency license, or revoke an existing private adoption agency license, unless the applicant or licensee demonstrates that they currently and continuously employ either an executive director or a supervisor who has had at least five years of full-time social work employment in the field of child welfare as described in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9 of the Welfare and Institutions Code or Division 13 (commencing with Section 8500) of the Family Code, two years of which shall have been spent performing adoption social work services in either the department or a licensed California adoption agency.

SEC. 9. Section 1505 of the Health and Safety Code is amended to read:

1505. This chapter does not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

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

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons

from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.

(*l*) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.

(m) (1) Any family home agency or family home, as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does either of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(B) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(n) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(o) Any similar facility determined by the director.

SEC. 9.5. Section 1505 of the Health and Safety Code is amended to read:

1505. This chapter does not apply to any of the following:

(a) Any health facility, as defined by Section 1250.

(b) Any clinic, as defined by Section 1202.

(c) Any juvenile placement facility approved by the California Youth Authority or any juvenile hall operated by a county.

(d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.

(e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of

providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.

(*l*) Any supported living arrangement for individuals with developmental disabilities as defined in Section 4689 of the Welfare and Institutions Code.

(m) (1) Any family home agency or family home, as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does either of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Health Services or certified by a licensee of the State Department of Social Services or the State Department of Health Services.

(B) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(n) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act, Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(o) Any housing for elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C.A. Sec. 1701g), or Section 811 of Public Law 101-625 (42 U.S.C.A. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C.A. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C.A. Sec. 17151), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services. The project owner or operator may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(p) Any similar facility determined by the director.

SEC. 9.8. Section 1530.8 of the Health and Safety Code is amended to read:

1530.8. (a) (1) The department shall adopt regulations for community care facilities licensed as group homes, and for temporary shelter care facilities as defined in subdivision (c), that care for dependent children, children placed by a regional center, or voluntary placements, who are younger than 6 years of age. The department shall adopt these regulations after assessing the needs of this population and developing standards pursuant to Section 11467.1 of the Welfare and Institutions Code.

(2) The department shall adopt regulations under this section that apply to mother and infant programs serving children younger than six years of age who reside in a group home with a minor parent who is the primary caregiver of the child that shall be subject to the requirements of subdivision (d).

(b) The regulations shall include physical environment standards, including staffing and health and safety requirements, that meet or exceed state child care standards under Title 5 and Title 22 of the California Code of Regulations.

(c) For purposes of this section, a "temporary shelter care facility" means any residential facility that meets all of the following requirements:

(1) It is owned and operated by the county.

(2) It is a 24-hour facility that provides short-term residential care and supervision for dependent children under 18 years of age who have been removed from their homes as a result of abuse or neglect, as defined in Section 300 of the Welfare and Institutions Code, or both.

(d) (1) By September 1, 1999, the department shall submit for public comment regulations specific to mother and infant programs serving children younger than six years of age who are dependents

of the court and reside in a group home with a minor child who is the primary caregiver of the child.

(2) The regulations shall include provisions that when the minor parent is absent and the facility is providing direct care to children younger than six years of age who are dependents of the court, there shall be one child care staff person for every four children of minor parents.

(3) In developing these proposed regulations, the department shall issue the proposed regulations for public comment, and shall refer to existing national standards for mother and infant programs as a guideline, where applicable.

(4) Prior to preparing the proposed regulations, the department shall consult with interested parties by convening a meeting by February 28, 1999, that shall include, but not be limited to, representatives from a public interest law firm specializing in children's issues and provider organizations.

SEC. 10. Section 319 of the Welfare and Institutions Code is amended to read:

319. At the initial petition hearing the court shall examine the child's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the child, as provided in Section 350.

The social worker shall report to the court on the reasons why the child has been removed from the parent's custody; the need, if any, for continued detention; on the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents or guardians; and whether there are any relatives who are able and willing to take temporary custody of the child. The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300 and any of the following circumstances exist:

(a) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parents' or guardians' physical custody.

(b) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(c) The child has left a placement in which he or she was placed by the juvenile court.

(d) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

The court shall also make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to

subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention. If the child can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the child with his or her parent or guardian and order that the services shall be provided. If the child cannot be returned to the custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child. Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts were reasonable. Whenever a court orders a child detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, and shall order services to be provided as soon as possible to reunify the child and his or her family if appropriate.

When the child is not released from custody the court may order that the child shall be placed in the suitable home of a relative or in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court or in an appropriate certified family home whose license is pending and all the prelicense requirements for that placement have been met as set forth in subdivision (e) of Section 361.2 for a period not to exceed 15 judicial days.

As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or a sibling of the child.

The court shall consider the recommendations of the social worker based on the emergency assessment of the relative's suitability, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

SEC. 11. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of all the following factors:

(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs.

(2) The wishes of the parent, the relative, and child, if appropriate.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half-siblings in the same home, if that placement is found to be in the best interest of each of the children as provided in Section 16002.

(5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect. However, this paragraph shall not be construed to provide independent grounds for access to the child abuse central index.

(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for the child.

(7) The ability of the relative to do the following:

(A) Provide a safe, secure, and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from his or her parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

(G) Facilitate implementation of all elements of the case plan.

(H) Provide legal permanence for the child if reunification fails. However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative.

(I) Arrange for appropriate and safe child care, as necessary.

(8) The safety of the relative's home. For purposes of this paragraph, the county social worker shall conduct a direct assessment of the safety of the relative's home. The information obtained as a result of this assessment shall be documented by the county social worker in the child's case record.

In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control.

The court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child. This inquiry shall not be construed, however, to guarantee that the child will be placed with any person so identified. The county social worker shall initially contact the relatives given preferential consideration for placement to determine if they desire the child to be placed with them. Those desiring placement shall be assessed according to the factors enumerated in this subdivision. The county social worker shall document these efforts in the social study prepared pursuant to Section 358.1. The court shall authorize the county social worker, while assessing these relatives for the possibility of placement, to disclose to the relative, as appropriate, the fact that the child is in custody, the alleged reasons for the custody, and the projected likely date for the child's return home or placement for adoption or legal guardianship. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great" or "grand" or the spouse of any of these persons even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to

relatives who have not been found to be unsuitable and who will fulfill the child's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the child.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

SEC. 11.1. Section 361.3 of the Welfare and Institutions Code is amended to read:

361.3. (a) In any case in which a child is removed from the physical custody of his or her parents pursuant to Section 361, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative. In determining whether placement with a relative is appropriate, the county social worker and court shall consider, but shall not be limited to, consideration of all the following factors:

(1) The best interest of the child, including special physical, psychological, educational, medical, or emotional needs.

(2) The wishes of the parent, the relative, and child, if appropriate.

(3) The provisions of Part 6 (commencing with Section 7950) of Division 12 of the Family Code regarding relative placement.

(4) Placement of siblings and half-siblings in the same home, if that placement is found to be in the best interest of each of the children as provided in Section 16002.

(5) The good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect.

(6) The nature and duration of the relationship between the child and the relative, and the relative's desire to care for the child.

(7) The ability of the relative to do the following:

(A) Provide a safe, secure, and stable environment for the child.

(B) Exercise proper and effective care and control of the child.

(C) Provide a home and the necessities of life for the child.

(D) Protect the child from his or her parents.

(E) Facilitate court-ordered reunification efforts with the parents.

(F) Facilitate visitation with the child's other relatives.

(G) Facilitate implementation of all elements of the case plan.

(H) Provide legal permanence for the child if reunification fails.

However, any finding made with respect to the factor considered pursuant to this subparagraph and pursuant to subparagraph (G) shall not be the sole basis for precluding preferential placement with a relative.

(I) Arrange for appropriate and safe child care, as necessary.

(8) The safety of the relative's home. For purposes of this paragraph, the county social worker shall conduct a direct assessment of the safety of the relative's home. The information obtained as a result of this assessment shall be documented by the county social worker in the child's case record.

In this regard, the Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a county social worker's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents him or her from exercising care and control. The court shall order the parent to disclose to the county social worker the names, residences, and any other known identifying information of any maternal or paternal relatives of the child. This inquiry shall not be construed, however, to guarantee that the child will be placed with any person so identified. The county social worker shall initially contact the relatives given preferential consideration for placement to determine if they desire the child to be placed with them. Those desiring placement shall be assessed according to the factors enumerated in this subdivision. The county social worker shall document these efforts in the social study prepared pursuant to Section 358.1. The court shall authorize the county social worker, while assessing these relatives for the possibility of placement, to disclose to the relative, as appropriate, the fact that the child is in custody, the alleged reasons for the custody, and the projected likely date for the child's return home or placement for adoption or legal guardianship. However, this investigation shall not be construed as good cause for continuance of the dispositional hearing conducted pursuant to Section 358.

(b) In any case in which more than one appropriate relative requests preferential consideration pursuant to this section, each relative shall be considered under the factors enumerated in subdivision (a).

(c) For purposes of this section:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great" or "grand" or the spouse of any of these persons even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for the placement of the child: an adult who is a grandparent, aunt, uncle, or sibling.

(d) Subsequent to the hearing conducted pursuant to Section 358, whenever a new placement of the child must be made, consideration for placement shall again be given as described in this section to relatives who have not been found to be unsuitable and who will

fulfill the child's reunification or permanent plan requirements. In addition to the factors described in subdivision (a), the county social worker shall consider whether the relative has established and maintained a relationship with the child.

(e) If the court does not place the child with a relative who has been considered for placement pursuant to this section, the court shall state for the record the reasons placement with that relative was denied.

SEC. 12. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 from the date the child entered foster care.

(2) For a child 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 from the date the child entered foster care.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child 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 child 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 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 366.26 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child 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 child, 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 child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child 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 child 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 that brought that child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the

parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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 child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) 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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 12-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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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 the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her

extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, development, 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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 12.1. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 from the date the child entered foster care.

(2) For a child 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 from the date the child entered foster care.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child 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 child 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 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month

period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 366.26 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child 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 child, 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 child

to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child 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 child 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 that brought that child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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.

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child.

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 child or that failure to try

reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 12-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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the

notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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 the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), or (13) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child's medical, development, 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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior

to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 12.3. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker

to provide child welfare services to the child and the child'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 child 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 child 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 from the date the child entered foster care.

(2) For a child 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 from the date the child entered foster care.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child 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 child 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 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 366.26 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child 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 child, 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 child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the

child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child 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 child 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 that brought that child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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 social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

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 child.

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 child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision. However, the time limits specified in subdivision (a) 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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 12-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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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 the 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, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 12.5. 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 child 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 child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child'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 child 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 child 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 from the date the child entered foster care.

(2) For a child 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 from the date the child entered foster care.

Regardless of the age of the child, a child shall be deemed to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the physical custody of his or her parent or guardian.

Notwithstanding paragraphs (1) and (2), court-ordered services may be extended up to a maximum time period not to exceed 18 months after the date the child was originally removed from physical custody of his or her parent or guardian if it can be shown, at the hearing held pursuant to subdivision (f) of Section 366.21, that the permanent plan for the child is that he or she will be returned and safely maintained in the home within the extended time period. The court shall extend the time period only if it finds that there is a substantial probability that the child 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 child 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 and subdivision (e) of Section 358.1.

When counseling or other treatment services are ordered, the parent or guardian shall be ordered to participate in those services, unless the parent's or guardian's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Physical custody of the child by the parents or guardians during the 12-month period shall not serve to interrupt the running of the period. If at the end of the 12-month period, a child cannot be safely returned to the care and custody of a parent or guardian without court supervision, but the child clearly desires contact with the parent or guardian, the court shall take the child's desire into account in devising a permanency plan.

In cases where the child 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 366.26 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 child or a sibling of the child 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 child had been removed from the custody of his or her parent or guardian pursuant to Section 361, that the child has been returned to the custody of the parent or guardian from whom the child had been taken originally, and that the child is being removed pursuant to Section 361, due to additional physical or sexual abuse.

(4) That the parent or guardian of the child has caused the death of another child through abuse or neglect.

(5) That the child was brought within the jurisdiction of the court under subdivision (e) of Section 300 because of the conduct of that parent or guardian.

(6) That the child 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 child, 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 child to pursue reunification services with the offending parent or guardian.

A finding of severe sexual abuse, for the purposes of this subdivision, may be based on, but is not limited to, sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half-sibling of the child, or between the child or a sibling or half-sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child'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 child's body or the body of a sibling or half-sibling of the child by an act or omission of the parent or guardian, or of another individual or animal with the consent of the parent or guardian; deliberate and torturous confinement of the child, sibling, or half-sibling in a closed space; or any other torturous act or omission that 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 child pursuant to paragraph (3), (5), or (6).

(8) That the child 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 that, if committed in this state, would constitute one of those offenses. This paragraph only applies to the parent who committed the offense or act.

(9) That the child has been found to be a child described in subdivision (g) of Section 300, that the parent or guardian of the child willfully abandoned the child, 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 child 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 child 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 child 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 child 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 child from that parent or guardian.

(11) That the parent or guardian of the child 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 child 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 that brought that child 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 child has advised the court that he or she is not interested in receiving family maintenance or family reunification services or having the child 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 social worker shall prepare a report that discusses whether reunification services shall be provided. When it is alleged, pursuant to paragraph (2) of subdivision (b), that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within the time limits specified in subdivision (a).

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 child.

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 child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that

reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

(d) If reunification services are not ordered pursuant to paragraph (1) of subdivision (b) and the whereabouts of a parent become known within six months of the out-of-home placement of the child, the court shall order the social worker to provide family reunification services in accordance with this subdivision.

(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 child. In determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of the crime or illness, the degree of detriment to the child if services are not offered and, for children 10 years of age or older, the child's attitude toward the implementation of family reunification services, and any other appropriate factors. Reunification services are subject to the 12-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 child 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 child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) The presiding judge of the juvenile court of each county may convene representatives of the county welfare department, the sheriff's department, and other appropriate entities for the purpose of developing and entering into protocols for ensuring the notification, transportation, and presence of an incarcerated or institutionalized parent at all court hearings involving proceedings affecting the child 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 the 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, at the dispositional hearing, that shall include a permanency hearing, determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. If the court so determines, it shall conduct the hearing pursuant to Section 366.26 within 120 days after 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 child unless it finds that visitation would be detrimental to the child.

(g) Whenever a court orders that a hearing shall be held pursuant to Section 366.26, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3. As used in this paragraph, "relative" means an adult who is

related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(h) In determining whether reunification services will benefit the child 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 child or the child's sibling or half-sibling.

(2) The circumstances under which the abuse or harm was inflicted on the child or the child's sibling or half-sibling.

(3) The severity of the emotional trauma suffered by the child or the child's sibling or half-sibling.

(4) Any history of abuse of other children by the offending parent or guardian.

(5) The likelihood that the child may be safely returned to the care of the offending parent or guardian within 12 months with no continuing supervision.

(6) Whether or not the child desires to be reunified with the offending parent or guardian.

(i) The court shall read into the record the basis for a finding of severe sexual abuse or the infliction of severe physical harm under paragraph (6) of subdivision (b), and shall also specify the factual findings used to determine that the provision of reunification services to the offending parent or guardian would not benefit the child.

SEC. 13. Section 366 of the Welfare and Institutions Code, as amended by Chapter 311 of the Statutes of 1998, 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 366.26 is completed. The court shall consider the safety of the child, 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. 14. Section 366.1 of the Welfare and Institutions Code is amended to read:

366.1. Each supplemental report required to be filed pursuant to Section 366 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department social worker has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9, as a possible solution to the problems at hand, and has offered those services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for the return and maintenance of the child in a safe home is recommended to the court by the county welfare department social worker.

(c) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

(d) What actions, if any, have been taken by the parent to correct the problems that caused the child to be made a dependent child of the court.

SEC. 15. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record

if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a

child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, the relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where,

pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a

substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian.

For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(j) This section shall apply to children made dependents of the court pursuant to subdivision (c) of Section 360 on or after January 1, 1989.

SEC. 15.1. Section 366.21 of the Welfare and Institutions Code is amended to read:

366.21. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing and of their right to be present and represented by counsel.

(b) Except as provided in Section 366.23 and subdivision (a) of Section 366.3, notice of the hearing shall be mailed by the social

worker to the same persons as in the original proceeding, to the child's parent or guardian, to the foster parents, relative caregivers, community care facility, or foster family agency having physical custody of the child in the case of a child removed from the physical custody of his or her parent or guardian, and to the counsel of record if the counsel of record was not present at the time that the hearing was set by the court, by first-class mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued. Service of a copy of the notice personally or by certified mail return receipt requested, or any other form of actual notice is equivalent to service by first-class mail.

The notice shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the child being recommended by the supervising agency. The notice to the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency shall indicate that the foster parent, relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency may attend all hearings or may submit any information he or she deems relevant to the court in writing.

(c) At least 10 calendar days prior to the hearing the social worker shall file a supplemental report with the court regarding the services provided or offered to the parent or guardian to enable him or her to assume custody and the efforts made to achieve legal permanence for the child if efforts to reunify fail, the progress made, and, where relevant, the prognosis for return of the child to the physical custody of his or her parent or guardian, and make his or her recommendation for disposition. If the recommendation is not to return the child to a parent or guardian, the report shall specify why the return of the child would be detrimental to the child. The social worker shall provide the parent or guardian with a copy of the report, including his or her recommendation for disposition, at least 10 calendar days prior to the hearing. In the case of a child removed from the physical custody of his or her parent or guardian, the social worker shall provide a summary of his or her recommendation for disposition to the counsel for the child, any court-appointed child advocate, foster parents, relative caregivers, certified foster parents who have been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, community care facility, or foster family agency having the physical custody of the child at least 10 calendar days before the hearing.

(d) Prior to any hearing involving a child in the physical custody of a community care facility or foster family agency that may result in the return of the child to the physical custody of his or her parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition. Prior to the hearing involving a child in the physical custody of a foster parent, a relative caregiver, or a certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, the foster parent, relative caregiver, or the certified foster parent who has been approved for adoption by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, may file with the court a report containing his or her recommendation for disposition. The court shall consider the report and recommendation filed pursuant to this subdivision prior to determining any disposition.

(e) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental or would not be detrimental. The court also shall make appropriate findings pursuant to subdivision (a) of Section 366; and where relevant, shall order any additional services

reasonably believed to facilitate the return of the child to the custody of his or her parent or guardian. The court shall also inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding pursuant to Section 366.26 may be instituted. This section does not apply in a case where, pursuant to Section 361.5, the court has ordered that reunification services shall not be provided.

If the child was under the age of three years on the date of the initial removal and the court finds by clear and convincing evidence that the parent failed to participate regularly in any court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If, however, the court finds there is a substantial probability that the child, who was under the age of three years on the date of initial removal, may be returned to his or her parent or guardian within six months or that reasonable services have not been provided, the court shall continue the case to the 12-month permanency hearing.

If the child was removed initially under subdivision (g) of Section 300 and the court finds by clear and convincing evidence that the whereabouts of the parent are still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Section 366.26 within 120 days. If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

If the child had been placed under court supervision with a previously noncustodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by paragraph (1) of subdivision (a) of Section 361.2.

In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian pursuant to the time periods set forth in subdivision (a) of Section 361.5, provided that the court may modify the terms and conditions of those services.

If the child is not returned to his or her parent or guardian, the court shall determine whether reasonable services have been provided or offered to the parent or guardian which were designed to aid the parent or guardian in overcoming the problems which led to the initial removal and the continued custody of the child. The court shall order that those services be initiated, continued, or terminated.

(f) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to subdivision (a) of Section 361.5. At the permanency hearing, the court shall determine the permanent plan for the child, that shall include a determination of whether the child will be

returned to the child's home and, if so, when, within the time limits of subdivision (a) of Section 361.5. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The court shall also determine whether reasonable services have been provided or offered to the parent or guardian that were designed to aid the parent or guardian to overcome the problems that led to the initial removal and continued custody of the child. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that the return would be detrimental. The court also shall make a finding pursuant to subdivision (a) of Section 366.

(g) If the time period in which the court-ordered services were provided has met or exceeded the time period set forth in paragraph (1) or (2) of subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a parent or guardian at the permanency hearing held pursuant to subdivision (f), the court shall do one of the following:

(1) Continue the case for up to six months for a permanency review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of his or her parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the child

will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or guardian. For the purposes of this section, in order to find a substantial probability that the child will be returned to the physical custody of his or her parent or guardian and safely maintained in the home within the extended period of time, the court shall be required to find all of the following:

(A) That the parent or guardian has consistently and regularly contacted and visited with the child.

(B) That the parent or guardian has made significant progress in resolving problems that led to the child's removal from the home.

(C) The parent or guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

The court shall inform the parent or guardian that if the child cannot be returned home by the next permanency review hearing, a proceeding pursuant to Section 366.36 may be instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parent or guardian.

(2) Order that the child remain in long-term foster care, but only if the court finds by clear and convincing evidence, based upon the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship. For purposes of this section, a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency that adoption is not in the best interest of the child shall constitute a compelling reason for the court's determination. That recommendation shall be based on the present circumstances of the child and shall not preclude a different recommendation at a later date if the child's circumstances change.

(3) Order that a hearing be held within 120 days, pursuant to Section 366.26, if there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(A) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(B) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(C) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

(h) In any case in which the court orders that a hearing pursuant to Section 366.26 shall be held, it shall also order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child.

(i) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purpose of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(j) If, at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(k) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 16. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or guardian. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented

to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

SEC. 16.1. Section 366.22 of the Welfare and Institutions Code is amended to read:

366.22. (a) When a case has been continued pursuant to paragraph (1) of subdivision (g) of Section 366.21, the permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or guardian. The court shall order the return of the child to the physical custody of his or her parent or guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in court-ordered treatment programs shall be prima facie evidence that return would be detrimental. In making its determination, the court shall review and consider the social worker's report and recommendations and the report and recommendations of any child advocate appointed pursuant to Section 356.5; shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which he or she availed himself or herself of services provided; and shall make appropriate findings pursuant to subdivision (a) of Section 366.

Evidence of any or all of the following circumstances shall not, in and of themselves, be deemed a failure to provide or offer reasonable services:

(1) The child has been placed with a foster family that is eligible to adopt a child, or has been placed in a preadoptive home.

(2) The case plan includes services to achieve legal permanence for the child if efforts to reunify fail.

(3) Services to achieve legal permanence for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

Whether or not the child is returned to his or her parent or guardian, the court shall specify the factual basis for its decision. If the child is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

If the child is not returned to a parent or guardian at the permanency review hearing, the court shall order that a hearing be held pursuant to Section 366.26 in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it, including a recommendation by the State Department of Social Services when it is acting as an adoption agency or by a licensed adoption agency, that there is a compelling reason, as described in paragraph (2) of subdivision (g) of Section 366.21, for determining that a hearing held under Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption and

has no one willing to accept legal guardianship, then the court may, only under these circumstances, order that the child remain in long-term foster care. The hearing shall be held no later than 120 days from the date of the permanency review hearing. The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the child unless it finds that visitation would be detrimental to the child. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

(b) Whenever a court orders that a hearing pursuant to Section 366.26 shall be held, it shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment that 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 child and his or her parents and other members of his or her extended family since the time of placement. Although the extended family of each child shall be reviewed on a case-by-case basis, "extended family" for the purposes of this paragraph shall include, but not be limited to, the child's siblings, grandparents, aunts, and uncles.

(3) An evaluation of the child'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 child's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship. If a proposed guardian is a relative of the minor, and the relative was assessed for foster care placement of the minor prior to January 1, 1998, the assessment shall also consider, but need not be limited to, all of the factors specified in subdivision (a) of Section 361.3.

(5) The relationship of the child 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 child concerning placement and the adoption or guardianship, unless the child'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 child will be adopted if parental rights are terminated.

(c) This section shall become operative January 1, 1999. If at any hearing held pursuant to Section 366.26, a guardianship is established for the minor with a relative, the relative shall be eligible for aid

under the Kin-GAP program as provided in Article 4.5 (commencing with Section 11360) of Chapter 2 of Part 3 of Division 9.

(d) As used in this section, "relative" means an adult who is related to the minor by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of those persons even if the marriage was terminated by death or dissolution.

SEC. 17. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall do one of the following:

(1) Permanently terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child for a period not to exceed 180 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the child and issue letters of guardianship.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) At the hearing the court shall proceed pursuant to one of the following procedures:

(1) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the child will be adopted. If the court so determines, the findings pursuant to subdivision (b) or paragraph 1 of subdivision (e) of Section 361.5 that reunification services shall not be offered, or the findings pursuant to subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, pursuant to Section 366.21 or 366.22, that a child cannot or should not be returned to his or her parent or guardian, shall then constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the sibling is, or should be, permanently placed together.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child for a period not to exceed 180 days. During this 180-day period, the public

agency responsible for seeking adoptive parents for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the interest of the child, because one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third

persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child' parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted.

The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified

in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

SEC. 17.1. Section 366.26 of the Welfare and Institutions Code is amended to read:

366.26. (a) This section applies to children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360. The procedures specified herein are the exclusive procedures for conducting these hearings; Part 2 (commencing with Section 3020) of Division 8 of the Family Code is not applicable to these proceedings. Section 8714.7 of the Family Code is applicable and available to all dependent children meeting the requirements of that section. For children who are adjudged dependent children of the juvenile court pursuant to subdivision (c) of Section 360, this section and Sections 8604, 8605, 8606, and 8700 of the Family Code and Chapter 5 (commencing with Section 7660) of Part 3 of Division 12 of the Family Code specify the exclusive procedures for permanently terminating parental rights with regard to, or establishing legal guardianship of, the child while the child is a dependent child of the juvenile court.

(b) At the hearing, that shall be held in juvenile court for all children who are dependents of the juvenile court, the court, in order to provide stable, permanent homes for these children, shall review the report as specified in Section 361.5, 366.21, or 366.22, shall indicate that the court has read and considered it, shall receive other evidence that the parties may present, and then shall make findings and orders in the following order of preference:

(1) Terminate the rights of the parent or parents and order that the child be placed for adoption and, upon the filing of a petition for adoption in the juvenile court, order that a hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted.

(2) On making a finding under paragraph (3) of subdivision (c), identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days.

(3) Appoint a legal guardian for the child and order that letters of guardianship issue.

(4) Order that the child be placed in long-term foster care, subject to the periodic review of the juvenile court under Section 366.3.

In choosing among the above alternatives the court shall proceed pursuant to subdivision (c).

(c) (1) If the court determines, based on the assessment provided as ordered under subdivision (i) of Section 366.21 or subdivision (b)

of Section 366.22, and any other relevant evidence, by a clear and convincing standard, that it is likely the child will be adopted, the court shall terminate parental rights and order the child placed for adoption. The fact that the child is not yet placed in a pre-adoptive home nor with a relative or foster family who is prepared to adopt the child, shall not constitute a basis for the court to conclude that it is not likely the child will be adopted. A finding under subdivision (b) or paragraph (1) of subdivision (e) of Section 361.5 that reunification services shall not be offered, under subdivision (e) of Section 366.21 that the whereabouts of a parent have been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness, or, under Section 366.21 or 366.22, that the court has continued to remove the child from the custody of the parent or guardian and has terminated reunification services, shall constitute a sufficient basis for termination of parental rights unless the court finds a compelling reason for determining that termination would be detrimental to the child due to one or more of the following circumstances:

(A) The parents or guardians have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.

(B) A child 12 years of age or older objects to termination of parental rights.

(C) The child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed.

(D) The child is living with a relative or foster parent who is unable or unwilling to adopt the child because of exceptional circumstances, that do not include an unwillingness to accept legal or financial responsibility for the child, but who is willing and capable of providing the child with a stable and permanent environment and the removal of the child from the physical custody of his or her relative or foster parent would be detrimental to the emotional well-being of the child. This subparagraph does not apply to any child who is living with a nonrelative and who is either (i) under six years of age or (ii) a member of a sibling group where at least one child is under six years of age and the siblings are, or should be, permanently placed together.

If the court finds that termination of parental rights would be detrimental to the child pursuant to subparagraph (A), (B), (C), or (D), it shall state its reasons in writing or on the record.

(2) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

(3) If the court finds that termination of parental rights would not be detrimental to the child pursuant to paragraph (1) and that the child has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the child within a period not to exceed 180 days. During this 180-day period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption. During the 180-day period, the public agency shall conduct the search for adoptive parents in the same manner as prescribed for children in Sections 8708 and 8709 of the Family Code. At the expiration of this period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b). For purposes of this section, a child may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the child because of the child's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the child is the age of seven years or more.

(4) If the court finds that adoption of the child or termination of parental rights is not in the best interest of the child, because one of the conditions in subparagraph (A), (B), (C), or (D) of paragraph (1) or in paragraph (2) applies, the court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the child or order that the child remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the child is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the child shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the child because the child has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.

(5) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the child with a stable and permanent environment, the court may order the care, custody, and control of the child transferred from the county welfare department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director regarding the

suitability of the transfer. The transfer shall be subject to further court orders.

The licensed foster family agency shall place the child in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the child and for providing appropriate services to the child, including those services ordered by the court. Responsibility for the support of the child shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the child. Those children whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(d) The proceeding for the appointment of a guardian for a child who is a dependent of the juvenile court shall be in the juvenile court. If the court finds pursuant to this section that legal guardianship is the appropriate permanent plan, it shall appoint the legal guardian and issue letters of guardianship. The assessment prepared pursuant to subdivision (g) of Section 361.5, subdivision (i) of Section 366.21, and subdivision (b) of Section 366.22 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

(e) The proceeding for the adoption of a child who is a dependent of the juvenile court shall be in the juvenile court if the court finds pursuant to this section that adoption is the appropriate permanent plan and the petition for adoption is filed in the juvenile court. Upon the filing of a petition for adoption, the juvenile court shall order that an adoption hearing be set. The court shall proceed with the adoption after the appellate rights of the natural parents have been exhausted. The full report required by Section 8715 of the Family Code shall be read and considered by the court prior to the adoption and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding. It is the intent of the Legislature, pursuant to this subdivision, to give potential adoptive parents the option of filing in the juvenile court the petition for the adoption of a child who is a dependent of the juvenile court. Nothing in this section is intended to prevent the filing of a petition for adoption in any other court as permitted by law, instead of in the juvenile court.

(f) At the beginning of any proceeding pursuant to this section, if the child or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the child require the appointment of counsel. If the court finds that the interests of the child do require this protection, the court shall appoint counsel to represent the child. If the court finds that the interests of the child require the representation of counsel, counsel

shall be appointed whether or not the child is able to afford counsel. The child shall not be present in court unless the child or the child's counsel so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the child and his or her parent. The public defender or private counsel may be appointed as counsel for the parent.

(3) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the child, in any proportions the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(g) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

(h) At all proceedings under this section, the court shall consider the wishes of the child and shall act in the best interests of the child.

The testimony of the child may be taken in chambers and outside the presence of the child's parent or parents if the child's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The child is likely to be intimidated by a formal courtroom setting.

(3) The child is afraid to testify in front of his or her parent or parents.

After testimony in chambers, the parent or parents of the child may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

The testimony of a child also may be taken in chambers and outside the presence of the guardian or guardians of a child under the circumstances specified in this subdivision.

(i) Any order of the court permanently terminating parental rights under this section shall be conclusive and binding upon the child, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this chapter. After making the order, the court shall have no power to set aside, change, or modify it, but nothing in this section shall be construed to limit the right to appeal the order.

(j) If the court, by order or judgment declares the child free from the custody and control of both parents, or one parent if the other does not have custody and control, the court shall at the same time order the child referred to the State Department of Social Services

or a licensed adoption agency for adoptive placement by the agency. However, no petition for adoption may be granted until the appellate rights of the natural parents have been exhausted. The State Department of Social Services or licensed adoption agency shall be responsible for the custody and supervision of the child and shall be entitled to the exclusive care and control of the child at all times until a petition for adoption is granted. With the consent of the agency, the court may appoint a guardian of the child, who shall serve until the child is adopted.

(k) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's emotional well-being.

As used in this subdivision, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

(*l*) (1) An order by the court that a hearing pursuant to this section be held is not appealable at any time unless all of the following applies:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition for extraordinary writ review was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule, to substantively address the specific issues challenged, or to support that challenge by an adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(3) The Judicial Council shall adopt rules of court, effective January 1, 1995, to ensure all of the following:

(A) A trial court, after issuance of an order directing a hearing pursuant to this section be held, shall advise all parties of the requirement of filing a petition for extraordinary writ review as set forth in this subdivision in order to preserve any right to appeal in these issues. This notice shall be made orally to a party if they are present at the time of the making of the order or by first-class mail by the clerk of the court to the last known address of a party not present at the time of the making of the order.

(B) The prompt transmittal of the records from the trial court to the appellate court.

(C) That adequate time requirements for counsel and court personnel exist to implement the objective of this subdivision.

(D) That the parent or guardian, or their trial counsel or other counsel, is charged with the responsibility of filing a petition for extraordinary writ relief pursuant to this subdivision.

(4) The intent of this subdivision is to do both of the following:

(A) Make every reasonable attempt to achieve a substantive and meritorious review by the appellate court within the time specified in Sections 366.21 and 366.22 for holding a hearing pursuant to this section.

(B) Encourage the appellate court to determine all writ petitions filed pursuant to this subdivision on their merits.

(5) This subdivision shall only apply to cases in which an order to set a hearing pursuant to this section is issued on or after January 1, 1995.

SEC. 18. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. The court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship established pursuant to Section 360 or 366.26 and as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child,

and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made

to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care.

The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency,

to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 18.3. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. The court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship established pursuant to Section 360 or 366.26 and as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the

child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. However, the court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to Section 366.21, 366.22, or 366.26, or subdivision (g).

(4) It has been 12 months since a review was conducted by the court.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held for a child in long-term foster placement and for whom 12 months have elapsed since a hearing at which the child was ordered into long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for

adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 18.5. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship , as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency

jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county

adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed every six months. This review may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the child remain in long-term foster care pursuant to paragraph (2) of subdivision (g) of Section 366.21, subdivision (a) of Section 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) At the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review held pursuant to paragraph (3) of subdivision (d), in addition to the review held pursuant to subdivision (e), the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the

parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care.

The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(g) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 18.7. Section 366.3 of the Welfare and Institutions Code is amended to read:

366.3. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Section 360 or 366.26, the court shall retain jurisdiction over the child until the child is adopted or the legal guardianship is established. The status of the child shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. When the adoption of the child has been granted, the court shall terminate its jurisdiction over the child. Following establishment of a legal guardianship, the court may continue jurisdiction over the child as a dependent child of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. If, however, a relative of the child is appointed the legal guardian of the child and the child has been placed with the relative for at least 12 months, the court shall, except upon a finding of exceptional circumstances, terminate its dependency jurisdiction and retain jurisdiction over the child as a ward of the guardianship, as authorized by Section 366.4. Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the child.

(b) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship, or no dependency jurisdiction attached because of the granting of a legal guardianship pursuant to Section 360, and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the child.

Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship which has been granted pursuant to Section 360 or 366.26 shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the child. Prior to the hearing on a petition to terminate guardianship pursuant to this paragraph, the court shall order the county department of social services or welfare department to prepare a report, for the court's consideration, that shall include an evaluation of whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or guardian. If applicable, the report shall also identify recommended services to maintain the guardianship and set forth a plan for providing those services. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the child, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination. If no dependency jurisdiction has attached, the social worker shall make any investigation he or she deems necessary to determine whether the child may be within the jurisdiction of the juvenile court, as provided in Section 328.

Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the new permanency planning hearing. The court shall try to place the child in another permanent placement. At the hearing, the parents may be considered as custodians but the child shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the child. The court may, if it is in the best interests of the child, order that reunification services again be provided to the parent or parents.

(c) If, following the establishment of a legal guardianship, the county welfare department becomes aware of changed circumstances that indicate adoption may be an appropriate plan for the child, the department shall so notify the court. The court may vacate its previous order dismissing dependency jurisdiction over the child and order that a hearing be held pursuant to Section 366.26 to determine whether adoption or continued guardianship is the most appropriate plan for the child. The hearing shall be held no later than 120 days from the date of the order. Whenever the court orders that

a hearing shall be held pursuant to Section 366.26, the court shall direct the agency supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment under subdivision (b) of Section 366.22.

(d) If the child is in a placement other than the home of a legal guardian and jurisdiction has not been dismissed, the status of the child shall be reviewed at least every six months. The review of the status of a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption shall be conducted by the court. The review of the status of a child for whom the court has not ordered parental rights terminated and who has not been ordered placed for adoption may be conducted by the court or an appropriate local agency. The court shall conduct the review under the following circumstances:

(1) Upon the request of the child's parents or guardians.

(2) Upon the request of the child.

(3) It has been 12 months since a hearing held pursuant to Section 366.26 or an order that the minor remain in long-term foster care pursuant to Section 366.21, 366.22, 366.26, or subdivision (f).

(4) It has been 12 months since a review was conducted by the court.

(e) Except as provided in subdivision (f), at the review held every six months pursuant to subdivision (d), the reviewing body shall inquire about the progress being made to provide a permanent home for the child, shall consider the safety of the child, and shall determine all of the following:

(1) The appropriateness of the placement.

(2) The continuing appropriateness and extent of compliance with the permanent plan for the child.

(3) The extent of compliance with the child welfare services case plan.

(4) The adequacy of services provided to the child.

(5) For a child who is 16 years of age or older, the services needed to assist the child to make the transition from foster care to independent living.

Each licensed foster family agency shall submit reports for each child in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the child's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the child.

Unless their parental rights have been permanently terminated, the parent or parents of the child are entitled to receive notice of, and participate in, those hearings. It shall be presumed that continued care is in the best interests of the child, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child. In those cases, the

court may order that further reunification services to return the child to a safe home environment be provided to the parent or parents for a period not to exceed six months.

(f) At the review conducted by the court and held at least every six months, regarding a child for whom the court has ordered parental rights terminated and who has been ordered placed for adoption, the county welfare department shall prepare and present to the court a report describing the following:

(1) The child's present placement.

(2) The child's current physical, mental, emotional, and educational status.

(3) Whether the child has been placed with a prospective adoptive parent or parents.

(4) Whether an adoptive placement agreement has been signed and filed.

(5) The progress of the search for an adoptive placement if one has not been identified.

(6) Any impediments to the adoption or the adoptive placement.

(7) The anticipated date by which the child will be adopted, or placed in an adoptive home.

(8) The anticipated date by which an adoptive placement agreement will be signed.

(9) Recommendations for court orders that will assist in the placement of the child for adoption or in the finalization of the adoption.

The court shall make appropriate orders to protect the stability of the child and to facilitate and expedite the permanent placement and adoption of the child.

(g) At the review held for a child in long-term foster placement and for whom 12 months have elapsed since a hearing at which the child was ordered into long-term foster care, the court shall consider all permanency planning options for the child including whether the child should be returned to the home of the parent, placed for adoption, or appointed a legal guardian, or whether the child should remain in long-term foster care. The court shall order that a hearing be held pursuant to Section 366.26 unless it determines by clear and convincing evidence, that there is a compelling reason for determining that a hearing held pursuant to Section 366.26 is not in the best interest of the child because the child is not a proper subject for adoption or that there is no one willing to accept legal guardianship. If it is unlikely that the child will be adopted or one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, that fact shall constitute a compelling reason for purposes of this subdivision. Only upon that determination may the court order that the child remain in long-term foster care, without holding a hearing pursuant to Section 366.26.

(h) If, as authorized by subdivision (f), the court orders a hearing pursuant to Section 366.26, the court shall direct the agency

supervising the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties that are not served by a county adoption agency, to prepare an assessment as provided for in subdivision (i) of Section 366.21 or subdivision (b) of Section 366.22. A hearing held pursuant to Section 366.26 shall be held no later than 120 days from the date of the 12-month review at which it is ordered, and at that hearing the court shall determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child.

SEC. 19. Section 366.4 of the Welfare and Institutions Code is amended to read:

366.4. Any minor for whom a guardianship has been established resulting from the selection or implementation of a permanent plan pursuant to Section 366.25 or 366.26 is within the jurisdiction of the juvenile court. For those minors, Part 2 (commencing with Section 1500) of Division 4 of the Probate Code, relating to guardianship, shall not apply. If no specific provision of this code or the California Rules of Court is applicable, the provisions applicable to the administration of estates under Part 4 (commencing with Section 2100) of Division 4 of the Probate Code govern so far as they are applicable to like situations.

SEC. 19.5. Section 10950 of the Welfare and Institutions Code is amended to read:

10950. If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his or her application for or receipt of public social services, if his or her application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefor, and is dissatisfied with that refusal, he or she shall, in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, upon filing a request with the State Department of Social Services or the State Department of Health Services, whichever department administers the public social service, be accorded an opportunity for a state hearing.

Priority in setting and deciding cases shall be given in those cases in which aid is not being provided pending the outcome of the hearing. This priority shall not be construed to permit or excuse the failure to render decisions within the time allowed under federal and state law.

Notwithstanding any other provision of this code, there is no right to a state hearing when either (1) state or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation, or (2) the sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

For the purposes of administering health care services and medical assistance, the State Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct state hearings in order to secure approval of a state plan under applicable federal law.

The State Director of Health Services may contract with the State Department of Social Services for the provisions of state hearings in accordance with this chapter.

As used in this chapter, "recipient" means an applicant for or recipient of public social services except aid exclusively financed by county funds or aid under Article 1 (commencing with Section 12000) to Article 6 (commencing with Section 12250), inclusive, of Chapter 3 of Part 3, and under Article 8 (commencing with Section 12350) of Chapter 3 of Part 3, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6, and shall include any individual who is an approved adoptive parent, as described in subdivision (C) of Section 8708 of the Family Code, and who alleges that he or she has been denied or has experienced delay in the placement of a child for adoption solely because he or she lives outside the jurisdiction of the department.

SEC. 19.6. Section 10950 of the Welfare and Institutions Code is amended to read:

10950. (a) If any applicant for or recipient of public social services is dissatisfied with any action of the county department relating to his or her application for or receipt of public social services, if his or her application is not acted upon with reasonable promptness, or if any person who desires to apply for public social services is refused the opportunity to submit a signed application therefor, and is dissatisfied with that refusal, he or she shall be accorded an opportunity for a state hearing.

(b) A custodial or noncustodial parent shall be accorded an opportunity for a state hearing when the department or a state or county agency operating pursuant to Section 11350.1 or 11475.1 is handling the parent's child support case, and the parent claims that child support collections have not been distributed or have been distributed or disbursed incorrectly, or the amount of child support arrears, as calculated by the department or a state or county agency operating pursuant to Section 11350.1 or 11475.1, is inaccurate. The amount of the court order for support, including current support and arrears, is not subject to a state hearing under this section.

(c) Hearings under subdivision (b) shall be provided in the same manner in which hearings are provided with respect to an application for, or receipt of, other public social services under this section. Pendency of a state hearing shall not affect the obligation to comply with an existing support order.

(d) A district attorney may institute a dispute resolution process for cases brought pursuant to subdivision (b). If a district attorney elects to provide a dispute resolution process, the custodial or

noncustodial parent requesting the hearing shall exhaust the dispute resolution process prior to the state hearing. If a district attorney notifies the department that it operates a dispute resolution process that is authorized to resolve disputes for which a state hearing is required, the department shall notify the district attorney promptly when a hearing has been requested. No hearing shall be scheduled until 30 days after the initial request for a state hearing to allow time for resolution of a dispute through the district attorney process. If a dispute is resolved through the district attorney process, the hearing request may be withdrawn or conditionally withdrawn as provided in department regulations. If no notice of withdrawal has been received by the department within 30 days following notice to the county, the department shall schedule a hearing.

(e) Subdivisions (b), (c), and (d) shall be implemented only to the extent that there is federal financial participation available at the child support funding rate set forth in paragraph (2) of subsection (a) of Section 655 of Title 42 of the United States Code.

(f) A request for a state hearing may be made in person or through an authorized representative, without the necessity of filing a claim with the board of supervisors, by filing a request with the department or the State Department of Health Services, whichever department administers the public social service.

(g) Priority in setting and deciding cases shall be given in those cases in which aid or services are not being provided pending the outcome of the hearing. This priority shall not be construed to permit or excuse the failure to render decisions within the time allowed under federal and state law.

(h) Notwithstanding any other provision of this code, there is no right to a state hearing when either of the following circumstances exists:

(1) State or federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual request is incorrect grant computation.

(2) The sole issue is a federal or state law requiring an automatic change in services or medical assistance which adversely affects some or all recipients.

(i) (1) For the purposes of administering health care services and medical assistance, the Director of Health Services shall have those powers and duties conferred on the Director of Social Services by this chapter to conduct state hearings in order to secure approval of a state plan under applicable federal law.

(2) The Director of Health Services may contract with the State Department of Social Services for the provision of state hearings in accordance with this chapter.

(j) (1) Any child support matter that is subject to the jurisdiction of the superior court and that is required by law to be addressed by motion or appeal under the Family Code shall not be subject to a state hearing under this section.

(2) The director may, by regulation, specify and exclude from the subject matter jurisdiction of state hearings provided under subdivision (b), grievances arising from a child support case in the superior court which must, by law, be addressed by motion or appeal under the Family Code.

(k) As used in this chapter, "recipient" means an applicant for or recipient of public social services, including child support services, except aid exclusively financed by county funds or aid under Article 1 (commencing with Section 12000) to Article 6 (commencing with Section 12250), inclusive, of Chapter 3 of Part 3, and under Article 8 (commencing with Section 12350) of Chapter 3 of Part 3, or those activities conducted under Chapter 6 (commencing with Section 18350) of Part 6, and shall include any individual who is an approved adoptive parent, as described in subdivision (C) of Section 8708 of the Family Code, and who alleges that he or she has been denied or has experienced delay in the placement of a child for adoption solely because he or she lives outside the jurisdiction of the department.

(*l*) The decision of a district attorney to proceed or to decline to proceed under Section 270 of the Penal Code, or seek or not seek contempt charges, shall not be subject to review in a hearing under this section.

SEC. 20. Section 11155.5 of the Welfare and Institutions Code is amended to read:

11155.5. (a) In addition to the personal property permitted by other provisions of this part, a child declared a ward or dependent child of the juvenile court, who is age 16 years or older, and who is a participant in the Independent Living Program pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985 (P.L. 99-272) may retain cash savings, not to exceed five thousand dollars ($5,000), including interest, accumulated pursuant to the child's Independent Living Program case plan. The cash savings shall be the child's own money and shall be deposited by the child or on behalf of the child in any bank or savings and loan institution whose deposits are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The cash savings shall be for the child's use for purposes directly related to emancipation pursuant to Part 6 (commencing with Section 7000) of Division 11 of the Family Code.

(b) The withdrawal of the savings shall require the written approval of the child's probation officer or social worker and shall be directly related to the goal of emancipation.

SEC. 21. Section 11400 of the Welfare and Institutions Code is amended to read:

11400. For the purposes of this article, the following definitions shall apply:

(a) "Aid to Families with Dependent Children-Foster Care (AFDC-FC)" means the aid provided on behalf of needy children in foster care under the terms of this division.

(b) "Case plan" means a written document that, at a minimum, specifies the type of home in which the child shall be placed, the safety of that home, and the appropriateness of that home to meet the child's needs. It shall also include the agency's plan for ensuring that the child receive proper care and protection in a safe environment, and shall set forth the appropriate services to be provided to the child, the child's family, and the foster parents, in order to meet the child's needs while in foster care, and to reunify the child with the child's family. In addition, the plan shall specify the services that will be provided or steps that will be taken to facilitate an alternate permanent plan if reunification is not possible.

(c) "Certified family home" means a family residence certified by a licensed foster family agency and issued a certificate of approval by that agency as meeting licensing standards, and used only by that foster family agency for placements.

(d) "Family home" means the family residency of a licensee in which 24-hour care and supervision are provided for children.

(e) "Small family home" means any residential facility, in the licensee's family residence, which provides 24-hour care for six or fewer foster children who have mental disorders or developmental or physical disabilities and who require special care and supervision as a result of their disabilities.

(f) "Foster care" means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting.

(g) "Foster family agency" means any individual or organization engaged in the recruiting, certifying, and training of, and providing professional support to, foster parents, or in finding homes or other places for placement of children for temporary or permanent care who require that level of care as an alternative to a group home. Private foster family agencies shall be organized and operated on a nonprofit basis.

(h) "Group home" means a nondetention privately operated residential home, organized and operated on a nonprofit basis only, of any capacity, that provides services in a group setting to children in need of care and supervision, as required by paragraph (1) of subdivision (a) of Section 1502 of the Health and Safety Code.

(i) "Periodic review" means review of a child's status by the juvenile court or by an administrative review panel, that shall include a consideration of the safety of the child, a determination of the continuing need for placement in foster care, evaluation of the goals for the placement and the progress toward meeting these goals, and development of a target date for the child's return home or establishment of alternative permanent placement.

(j) "Permanency planning hearing" means a hearing conducted by the juvenile court in which the child's future status, including whether the child shall be returned home or another permanent plan shall be developed, is determined.

(k) "Placement and care" refers to the responsibility for the welfare of a child vested in an agency or organization by virtue of the agency or organization having (1) been delegated care, custody, and control of a child by the juvenile court, (2) taken responsibility, pursuant to a relinquishment or termination of parental rights on a child, (3) taken the responsibility of supervising a child detained by the juvenile court pursuant to Section 319 or 636, or (4) signed a voluntary placement agreement for the child's placement; or to the responsibility designated to an individual by virtue of his or her being appointed the child's legal guardian.

(*l*) "Preplacement preventive services" means services which are designed to help children remain with their families by preventing or eliminating the need for removal.

(m) "Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand" or the spouse of any of these persons even if the marriage was terminated by death or dissolution.

(n) "Voluntary placement" means an out-of-home placement of a child by (1) the county welfare department after the parents or guardians have requested the assistance of the county welfare department and have signed a voluntary placement agreement; or (2) the county welfare department licensed public or private adoption agency, or the department acting as an adoption agency, after the parents have requested the assistance of either the county welfare department, the licensed public or private adoption agency, or the department acting as an adoption agency for the purpose of adoption planning, and have signed a voluntary placement agreement.

(o) "Voluntary placement agreement" means a written agreement between either the county welfare department, a licensed public or private adoption agency, or the department acting as an adoption agency, and the parents or guardians of a child that specifies, at a minimum, the following:

(1) The legal status of the child.

(2) The rights and obligations of the parents or guardians, the child, and the agency in which the child is placed.

(p) "Original placement date" means the most recent date on which the court detained a child and ordered an agency to be responsible for supervising the child or the date on which an agency assumed responsibility for a child due to termination of parental rights, relinquishment, or voluntary placement.

(q) "Transitional housing placement facility" means a community care facility licensed by the State Department of Social Services pursuant to Section 1559.110 of the Health and Safety Code to provide transitional housing opportunities to persons at least 17 years old, and not more than 18 years old unless they satisfy the requirements of

Section 11403, who are in out-of-home placement under the supervision of the county department of social services or the county probation department, and who are participating in an independent living program.

(r) "Transitional housing placement program" means a program that has been certified by the county department of social services or the county probation department and approved by the department to provide licensed, supervised, transitional housing opportunities to eligible youth pursuant to Section 16522.

SEC. 22. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18 years, except as provided in Section 11403, who meets the conditions of subdivision (a), (b), (c), (d), (e) or (f):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Family Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care, provides to such children all services as required by the department to children in foster care.

(b) The child has been removed from the physical custody of his or her parent, relative, or guardian as a result of a voluntary placement agreement or a judicial determination that continuance in the home would be contrary to the child's welfare and that, if the child was placed in foster care, reasonable efforts were made, consistent with Chapter 5 (commencing with Section 16500) of Part 4, to prevent or eliminate the need for removal of the child from his or her home and to make it possible for the child to return to his or her home, or, in cases where the first contact with the family occurs during an emergency situation in which the child could not safely remain at home even with reasonable efforts being provided, the child has been removed as a result of a judicial determination that lack of preplacement preventive efforts, as defined in Section 16501.1, was reasonable, and any of the following apply:

(1) The child has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 300.

(2) The child has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and 602.

(3) The child has been detained under a court order pursuant to Section 319 or 636 which remains in effect.

(c) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11401.1.

(d) The child is living in the home of a nonrelated legal guardian.

(e) The child has been placed in foster care under the federal Indian Child Welfare Act. Sections 11402, 11404, and 11405 shall not

be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with that act.

(f) To be eligible for federal financial participation, all of the following conditions shall exist:

(1) The child shall meet the conditions of subdivision (b).

(2) The child shall have been deprived of parental support or care for any of the reasons set forth in Section 11250.

(3) The child shall have been removed from the home of a relative as defined in Section 233.90(c)(1) of Title 45 of the Code of Federal Regulations, as amended.

(4) The requirements of Sections 671 and 672 of Title 42 of the United States Code, as amended, have been met.

SEC. 23. Section 11404.1 of the Welfare and Institutions Code is amended to read:

11404.1. In order to be eligible for AFDC-FC, the child shall receive a periodic review no less frequently than once every six months and a permanency hearing within 12 months after the date the child entered foster care, as provided in subdivision (a) of Section 361.5. The child shall also receive permanency planning hearings periodically, but no less frequently than once each 12 months thereafter, as required by subdivision (f) of Section 366.3 throughout the period of foster care placement. Periodic reviews and permanency planning hearings shall not be required for a child who is residing with a nonrelated legal guardian.

SEC. 24. Section 11478.1 of the Welfare and Institutions Code is amended to read:

11478.1. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 11475.2 of this code and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9 of the Family Code.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement

program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(2) In no case shall information be released or the whereabouts of one party disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the former party, a good cause claim under Section 11477.04 has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the former party.

(3) Notwithstanding any other provision of law, a proof of service filed by the district attorney shall not disclose the address where service of process was accomplished. Instead, the district attorney shall keep the address in his or her own records. The proof of service shall specify that the address is on record at the district attorney's office and that the address may be released only upon an order from the court pursuant to paragraph (6) of subdivision (c).

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and any other plan or program described in Section 303.21 of Title 45 of the Code of Federal Regulations and to the county welfare department responsible for administering a program operated under a state plan pursuant to Subpart 1 or 2 of Part B or Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(5) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code) may be released.

(6) After a noticed motion and a finding by the court, in a case in which establishment or enforcement actions are being taken, that release or disclosure to the obligor or obligee is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor or obligee for examination or copying, or to disclose to the obligor or obligee the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part. At any hearing of a motion filed pursuant to this section, the court shall inquire of the district attorney and the parties appearing at the hearing if there is reason to believe that release of the requested information may result in physical or emotional harm to a party. If the court determines that harm may occur, the court shall issue any protective orders or injunctive orders restricting the use and disclosure of the information as are necessary to protect the individuals.

(7) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a child, or location of a concealed, detained, or abducted child or the location of the concealing, detaining, or abducting person, may be disclosed to any district attorney, any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(8) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized person as defined in Section 653(c) of Title 42 of the United States Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d) (1) "Administration and implementation of the child and spousal support enforcement program," as used in this section, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this section, "obligor" means any person owing a duty of support.

(3) As used in this chapter, "putative parent" shall refer to any person reasonably believed to be the parent of a child for whom the district attorney is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 11475.1.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 24.5. Section 11478.1 of the Welfare and Institutions Code is amended to read:

11478.1. (a) It is the intent of the Legislature to protect individual rights of privacy, and to facilitate and enhance the effectiveness of the child and spousal support enforcement program, by ensuring the confidentiality of support enforcement and child abduction records, and to thereby encourage the full and frank disclosure of information relevant to all of the following:

(1) The establishment or maintenance of parent and child relationships and support obligations.

(2) The enforcement of the child support liability of absent parents.

(3) The enforcement of spousal support liability of the spouse or former spouse to the extent required by the state plan under Section 11475.2 of this code and Chapter 6 (commencing with Section 4900) of Part 5 of Division 9 of the Family Code.

(4) The location of absent parents.

(5) The location of parents and children abducted, concealed, or detained by them.

(b) (1) Except as provided in subdivision (c), all files, applications, papers, documents, and records established or maintained by any public entity pursuant to the administration and implementation of the child and spousal support enforcement program established pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article, shall be confidential, and shall not be open to examination or released for disclosure for any purpose not directly connected with the administration of the child and spousal support enforcement program. No public entity shall disclose any file, application, paper, document, or record, or the information contained therein, except as expressly authorized by this section.

(2) In no case shall information be released or the whereabouts of one party or the child disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the former party, a good cause claim under Section 11477.04 has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the former party or the child.

(3) Notwithstanding any other provision of law, a proof of service filed by the district attorney shall not disclose the address where

service of process was accomplished. Instead, the district attorney shall keep the address in his or her own records. The proof of service shall specify that the address is on record at the district attorney's office and that the address may be released only upon an order from the court pursuant to paragraph (6) of subdivision (c).

(c) Disclosure of the information described in subdivision (b) is authorized as follows:

(1) All files, applications, papers, documents and records as described in subdivision (b) shall be available and may be used by a public entity for all administrative, civil, or criminal investigations, actions, proceedings, or prosecutions conducted in connection with the administration of the child and spousal support enforcement program approved under Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code, and any other plan or program described in Section 303.21 of Title 45 of the Code of Federal Regulations and to the county welfare department responsible for administering a program operated under a state plan pursuant to Subpart 1 or 2 or Part B or Part E of Subchapter IV of Chapter 7 of Title 42 of the United States Code.

(2) A document requested by a person who wrote, prepared, or furnished the document may be examined by or disclosed to that person or his or her designee.

(3) The payment history of an obligor pursuant to a support order may be examined by or released to the court, the obligor, or the person on whose behalf enforcement actions are being taken or that person's designee.

(4) Income and expense information of either parent may be released to the other parent for the purpose of establishing or modifying a support order.

(5) Public records subject to disclosure under the Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of the Government Code) may be released.

(6) After a noticed motion and a finding by the court, in a case in which establishment or enforcement actions are being taken, that release or disclosure to the obligor or obligee is required by due process of law, the court may order a public entity that possesses an application, paper, document, or record as described in subdivision (b) to make that item available to the obligor or obligee for examination or copying, or to disclose to the obligor or obligee the contents of that item. Article 9 (commencing with Section 1040) of Chapter 4 of Division 3 of the Evidence Code shall not be applicable to proceedings under this part. At any hearing of a motion filed pursuant to this section, the court shall inquire of the district attorney and the parties appearing at the hearing if there is reason to believe that release of the requested information may result in physical or emotional harm to a party. If the court determines that harm may occur, the court shall issue any protective orders or injunctive orders

restricting the use and disclosure of the information as are necessary to protect the individuals.

(7) To the extent not prohibited by federal law or regulation, information indicating the existence or imminent threat of a crime against a child, or location of a concealed, detained, or abducted child or the location of the concealing, detaining, or abducting person, may be disclosed to any district attorney, any appropriate law enforcement agency, or to any state or county child protective agency, or may be used in any judicial proceedings to prosecute that crime or to protect the child.

(8) The social security number, most recent address, and the place of employment of the absent parent may be released to an authorized person as defined in Section 653(c) of Title 42 of the United States Code, only if the authorized person has filed a request for the information, and only if the information has been provided to the California Parent Locator Service by the federal Parent Locator Service pursuant to Section 653 of Title 42 of the United States Code.

(d) (1) "Administration and implementation of the child and spousal support enforcement program," as used in this section, means the carrying out of the state and local plans for establishing, modifying, and enforcing child support obligations, enforcing spousal support orders, and determining paternity pursuant to Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code and this article.

(2) For purposes of this section, "obligor" means any person owing a duty of support.

(3) As used in this chapter, "putative parent" shall refer to any person reasonably believed to be the parent of a child for whom the district attorney is attempting to establish paternity or establish, modify, or enforce support pursuant to Section 11475.1.

(e) Any person who willfully, knowingly, and intentionally violates this section is guilty of a misdemeanor.

(f) Nothing in this section shall be construed to compel the disclosure of information relating to a deserting parent who is a recipient of aid under a public assistance program for which federal aid is paid to this state, if that information is required to be kept confidential by the federal law or regulations relating to the program.

SEC. 25. Section 16100 of the Welfare and Institutions Code is amended to read:

16100. (a) Any county may apply for, and the department may issue pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code to any county agency designated by the county making the application, a license to perform the home-finding and placement functions, to investigate, examine, and make reports upon petitions for adoption filed in the superior court, to act as a placement agency in the placement of children for adoption, to accept relinquishments for adoption, and to perform such other functions in connection with adoption as the

department deems necessary, or to do any of them. Nothing in this section shall be construed to authorize a licensed county adoption agency, as provided in subdivision (d), to provide intercountry adoption services.

(b) Notwithstanding any other provision of law, a licensed county adoption agency may contract for services described in subdivision (a) from any licensed private adoption agency that the private adoption agency is licensed to provide pursuant to Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code. A licensed county adoption agency may also contract for services described in subdivision (a) from any out-of-state licensed public or private adoption agency that is licensed pursuant to the laws of that state. Any services contracted for shall substantially meet the standards and criteria established in California adoption regulations as determined by the licensed county adoption agency. These services shall be contracted for in order to facilitate adoptive placement of a specified category of children for whom the licensed county adoption agency has determined it cannot provide adequate services.

(c) In order to extend the services of county adoption agencies to the maximum number of counties practicable within the limits of funds appropriated therefor, the department may license a county adoption agency to operate in such other counties in the general area of the agency as it deems conducive to the effective and efficient administration of the adoption program.

(d) A license issued to a county agency pursuant to this section constitutes the holder thereof a "county adoption agency" and the holder shall be deemed to be an "organization" within the meaning of this code and of Division 13 (commencing with Section 8500) of the Family Code.

SEC. 26. Section 16120 of the Welfare and Institutions Code is amended to read:

16120. A child shall be eligible for Adoption Assistance Program benefits if all of the conditions specified in subdivisions (a) through (g), inclusive, are met or if the conditions specified in subdivision (h) are met.

(a) The child has at least one of the following characteristics that are barriers to his or her adoption:

(1) Adoptive placement without financial assistance is unlikely because of membership in a sibling group that should remain intact or by virtue of race, ethnicity, color, language, age of three years or older, or parental background of a medical or behavioral nature that can be determined to adversely affect the development of the child.

(2) Adoptive placement without financial assistance is unlikely because the child has a mental, physical, emotional, or medical disability that has been certified by a licensed professional competent to make an assessment and operating within the scope of his or her profession. This paragraph shall also apply to children with a

developmental disability as defined in subdivision (a) of Section 4512, including those determined to require out-of-home nonmedical care as described in Section 11464.

(b) The need for adoption subsidy is evidenced by an unsuccessful search for an adoptive home to take the child without financial assistance, as documented in the case file of the prospective adoptive child. The requirement for this search shall be waived when it would be against the best interest of the child because of the existence of significant emotional ties with prospective adoptive parents while in the care of these persons as a foster child.

(c) The child is the subject of an agency adoption as defined in Section 8506 of the Family Code and was any of the following:

(1) Under the supervision of a county welfare department as the subject of a legal guardianship or juvenile court dependency.

(2) Relinquished for adoption to a licensed California private or public adoption agency, or the department, and would have otherwise been at risk of dependency as certified by the responsible public child welfare agency.

(3) Committed to the department pursuant to Section 8805 or 8918 of the Family Code.

(d) The child is under 18 years of age, or under 21 years of age and has a mental or physical handicap that warrants the continuation of assistance.

(e) The adoptive family is responsible for the child pursuant to the terms of an adoptive placement agreement or a final decree of adoption and has signed an adoption assistance agreement.

(f) The adoptive family is legally responsible for the support of the child and the child is receiving support from the adoptive parent.

(g) The department or the county responsible for determining the child's Adoption Assistance Program eligibility status and for providing financial aid, and the prospective adoptive parent, prior to or at the time the adoption decree is issued by the court, have signed an adoption assistance agreement that stipulates the need for, and the amount of, Adoption Assistance Program benefits.

(h) A child shall be eligible for Adoption Assistance Program benefits if the child received Adoption Assistance Program benefits with respect to a prior adoption and the child is again available for adoption because the prior adoption was dissolved and the parental rights of the adoptive parents were terminated or because the child's adoptive parents died.

SEC. 27. Section 16131 is added to the Welfare and Institutions Code, to read:

16131. It is the intent of the Legislature to conform state statutes to recently enacted federal legislation, the Adoption and Safe Families Act of 1997 (Public Law 105-89), and to reinvest any incentive payments received through implementation of the federal act into the child welfare system in order to provide increased

postadoption social services, as needed, to families who have adopted children from the public foster care system.

SEC. 28. Section 16501.1 of the Welfare and Institutions Code, as amended by Chapter 311 of the Statutes of 1998, 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 safe and proper case management, and that services are provided to the parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. 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. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concern. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(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 a safe setting that is the least restrictive or most familylike and most appropriate setting that is available and in close proximity to the parent's home, consistent with the 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 366.26, but no less frequently than once every six months. Each updated case plan shall

include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(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 that 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 that 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) When out-of-home services are used, the child's case plan is subject to review at the first 12-month permanency hearing, and if the case plan is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (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.

(12) 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.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal

guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(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, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker'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. 29. Section 16508.1 is added to the Welfare and Institutions Code, to read:

16508.1. (a) For every child who is in foster care, or who enters foster care, on or after January 1, 1999, and has been in foster care for 15 of the most recent 22 months, the social worker shall submit to the court a recommendation that the court set a hearing pursuant to Section 366.26 for the purpose of terminating parental rights. The social worker shall concurrently initiate and describe a plan to identify, recruit, process and approve a qualified family for adoption of the child.

(b) The social worker is not required to submit the recommendation as described in subdivision (a) if any of the following applies:

(1) The case plan for the child has documented a compelling reason or reasons why it is unlikely that the child will be adopted, as determined by the department when it is acting as an adoption agency or by the licensed adoption agency, and therefore termination of parental rights would not be in the best interest of the child or that one of the conditions set forth in paragraph (1) of subdivision (c) of Section 366.26 applies.

(2) A hearing under Section 366.26 is already set.

(3) The court has found at the previous hearing under Section 366.21 that there is a substantial probability that the child will be returned to the child's home within the extended period of time permitted.

(4) The court has found at the previous hearing under Section 366.21 that reasonable reunification services have not been offered or provided.

(5) The court has found at each and every hearing at which the court was required to consider reasonable efforts or services that reasonable efforts were not made or that reasonable services were not offered or provided.

(c) A recommendation to the court pursuant to subdivision (a) shall not be made if the social worker documents in the case record a compelling reason why a hearing pursuant to Section 366.26 is not in the best interest of the child, or that reasonable efforts to safely return the child home are continuing consistent with the time period provided for in paragraph (1) of subdivision (g) of Section 366.21.

(d) Beginning January 1, 1999, the county welfare department shall implement a procedure for reviewing the application of this section to the case plans of all children who have been in foster care for 15 out of the most recent 22 months. The review shall proceed within the following timeframes:

(1) By July 1, 1999, one-third of the children shall have been reviewed, giving priority to children who have been in foster care the greatest length of time.

(2) By January 1, 2000, at least two-thirds of the children shall have been reviewed.

(3) By July 1, 2000, all children shall have been reviewed.

(e) For purposes of this section, a child shall be considered to have entered foster care on the earlier of the date of the jurisdictional hearing held pursuant to Section 356 or the date that is 60 days after the date on which the child was initially removed from the home of his or her parent or guardian.

SEC. 30. Section 3.1 of this bill incorporates amendments to Section 8708 of the Family Code proposed by both this bill and AB 1444. 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 8708 of the Family Code, and (3) this bill is enacted after AB 1444, in which case Section 3 of this bill shall not become operative.

SEC. 31. Section 9.5 of this bill incorporates amendments to Section 1505 of the Health and Safety Code proposed by both this bill and AB 2686. 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 1505 of the Health and Safety Code, and (3) this bill is enacted after AB 2686, in which case Section 9 of this bill shall not become operative.

SEC. 32. Section 11.1 of this bill incorporates amendments to Section 361.3 of the Welfare and Institutions Code proposed by both this bill and SB 645. 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 361.3 of the Welfare and Institutions Code, and

(3) this bill is enacted after SB 645, in which case Section 11 of this bill shall not become operative.

SEC. 33. (a) Section 12.1 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and SB 1901. It shall only become operative if (1) both bills are enacted and become effective January 1, 1999, (2) each bill amends Section 361.5 of the Welfare and Institutions Code, and (3) SB 2091 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1901, in which case Sections 12, 12.3, and 12.5 of this bill shall not become operative.

(b) Section 12.3 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by both this bill and SB 2091. It shall only become operative if (1) both bills are enacted and become effective January 1, 1999, (2) each bill amends Section 365.1 of the Welfare and Institutions Code, (3) SB 1901 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 2091 in which case Sections 12, 12.1, and 12.5 of this bill shall not become operative.

(c) Section 12.5 of this bill incorporates amendments to Section 361.5 of the Welfare and Institutions Code proposed by this bill, SB 1901, and SB 2091. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1999, (2) all three bills amend Section 361.5 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1901 and SB 2091, in which case Sections 12, 12.1, and 12.3 of this bill shall not become operative.

SEC. 34. Section 15.1 of this bill incorporates amendments to Section 366.21 of the Welfare and Institutions Code proposed by both this bill and SB 1901. 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 366.21 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1901, in which case Section 15 of this bill shall not become operative.

SEC. 35. Section 16.1 of this bill incorporates amendments to Section 366.22 of the Welfare and Institutions Code proposed by both this bill and SB 1901. 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 366.22 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1901, in which case Section 16 of this bill shall not become operative.

SEC. 36. Section 17.1 of this bill incorporates amendments to Section 366.26 of the Welfare and Institutions Code proposed by both this bill and AB 2310. 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 366.26 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2310, in which case Section 17 of this bill shall not become operative.

SEC. 37. (a) Section 18.3 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both

this bill and SB 1482. It shall only become operative if (1) both bills are enacted and become effective January 1, 1999, (2) each bill amends Section 366.3 of the Welfare and Institutions Code, and (3) SB 1901 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1482, in which case Sections 18, 18.5, and 18.7 of this bill shall not become operative.

(b) Section 18.5 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by both this bill and SB 1901. It shall only become operative if (1) both bills are enacted and become effective January 1, 1999, (2) each bill amends Section 366.3 of the Welfare and Institutions Code, (3) SB 1482 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 1901 in which case Sections 18,18.3 and 18.7 of this bill shall not become operative.

(c) Section 18.7 of this bill incorporates amendments to Section 366.3 of the Welfare and Institutions Code proposed by this bill, SB 1482, and SB 1901. It shall only become operative if (1) all three bills are enacted and become effective January 1, 1999, (2) all three bills amend Section 366.3 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 1482 and SB 1901, in which case Sections 18, 18.3, and 18.5 of this bill shall not become operative.

SEC. 38. Section 19.6 of this bill incorporates amendments to Section 10950 of the Welfare and Institutions Code proposed by both this bill and AB 1961. 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 10950 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 1961, in which case Section 19.5 of this bill shall not become operative.

SEC. 39. Section 24.5 of this bill incorporates amendments to Section 11478.1 of the Welfare and Institutions Code proposed by both this bill and AB 2169. 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 11478.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2169, in which case Section 24 of this bill shall not become operative.

SEC. 40. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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

SEC. 41. The sum of three hundred thirty thousand dollars ($330,000) is hereby appropriated from the General Fund to the State Department of Social Services for the purposes of this act.

CHAPTER 1057

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

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

I am signing Assembly Bill No. 1812 with a reduction.

This bill would appropriate monies from the General Fund to the San Joaquin Area Flood Control Agency for the Stockton Metropolitan Area Flood Control Project, and to San Luis Obispo County for house laterals and infrastructure improvements.

The appropriation for the San Joaquin Area Flood Control Agency exceeds the normal and customary State share of nonfederal costs. Therefore, I am reducing the appropriation contained in Section 1 by $2,427,000 to reflect the proper amount. The revised appropriation shall be $12,625,000. The $12,000,000 provides 70 percent of the projected nonfederal share of $17,000,000 for the flood control project, and the $625,000 provides 50 percent of the projected non share of $1,250,000 for environmental enhancements.

I am deleting section 2 of this bill. This section would have used public monies to fund improvements on private property (i.e., house laterals for connection to a sewer system). While numerous sewer collection system projects have been funded by the State Water Resources Control Board (SWRCB) assistance programs, the costs of installation of the house laterals have always been paid for by the property owners. There is some question as to whether this appropriation is legal, or whether it would constitute a gift of public funds.

PETE WILSON, Governor

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

SECTION 1. The sum of fifteen million fifty-two thousand dollars ($15,052,000) is hereby appropriated from the General Fund to the San Joaquin Area Flood Control Agency for the Stockton Metropolitan Area Flood Control Project.

SEC. 2. The sum of fifteen million dollars ($15,000,000) is hereby appropriated from the General Fund to the Controller for allocation to a county of the twenty-fourth class. The fifteen million dollars ($15,000,000) may only be used by that county for the purpose of constructing the necessary house laterals and infrastructure for any unsewered coastal municipality that meets all of the following conditions:

(a) Has a population of less than 15,000, as determined by the 1990 federal census.

(b) Is located within a designated national marine estuary study area under Section 320 of the Clean Water Act (33 U.S.C.A. Sec. 1330).

(c) Is subject to an enforcement order of a regional quality control board that prohibits the discharge of waste from individual sewage disposal systems.

SEC. 3. The Legislature finds and declares with respect to Section 2 of this act that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution as a result of the uniquely severe and pervasive difficulties being experienced in a county of the twenty-fourth class with respect to water quality.

CHAPTER 1058

An act to amend Sections 2530.2 and 2534.2 of, to amend the heading of Article 6 (commencing with Section 2535) of Chapter 5.3 of Division 2 of, to amend and renumber Sections 2538 and 2539 of, to add Section 2532.6 to, and to add Article 7.5 (commencing with Section 2538) to Chapter 5.3 of Division 2 of, the Business and Professions Code, and to amend Section 56363 of the Education Code, relating to speech-language pathology, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 2530.2 of the Business and Professions Code is amended to read:

2530.2. As used in this chapter, unless the context otherwise requires:

(a) "Board" means the Speech-Language Pathology and Audiology Board or any successor.

(b) "Person" means any individual, partnership, corporation, limited liability company, or other organization or combination thereof, except that only individuals can be licensed under this chapter.

(c) A "speech-language pathologist" is a person who practices speech-language pathology.

(d) "The practice of speech-language pathology" means the application of principles, methods, and procedures for measurement, testing, identification, prediction, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of identifying, preventing, managing, habilitating or rehabilitating, ameliorating, or modifying those disorders and conditions in individuals or groups of individuals; conducting hearing screenings; and the planning, directing, conducting and supervision

of programs for identification, evaluation, habilitation, and rehabilitation of disorders of speech, voice, or language.

(e) "Speech-language pathology aide" means any person meeting the minimum requirements established by the board, who works directly under the supervision of a speech-language pathologist.

(f) (1) "Speech-language pathology assistant" means a person who meets the academic and supervised training requirements set forth by the board and who is approved by the board to assist in the provision of speech-language pathology under the direction and supervision of a speech-language pathologist who shall be responsible for the extent, kind, and quality of the services provided by the speech-language pathology assistant.

(2) The supervising speech-language pathologist employed or contracted for by a public school may hold either a valid and current license issued by the board or a valid, current, and professional clear clinical or rehabilitative services credential in language, speech, and hearing issued by the Commission on Teacher Credentialing. For purposes of this paragraph, a "clear" credential is a credential that is not issued pursuant to a waiver or emergency permit and is as otherwise defined by the Commission on Teacher Credentialing.

(g) An "audiologist" is one who practices audiology.

(h) "The practice of audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, instruction related to auditory, vestibular, and related functions and the modification of communicative disorders involving speech, language, auditory behavior or other aberrant behavior resulting from auditory dysfunction; and the planning, directing, conducting, supervising, or participating in programs of identification of auditory disorders, hearing conservation, cerumen removal, aural habilitation, and rehabilitation, including, hearing aid recommendation and evaluation procedures including, but not limited to, specifying amplification requirements and evaluation of the results thereof, auditory training, and speech reading.

(i) "Audiology aide" means any person, meeting the minimum requirements established by the board, who works directly under the supervision of an audiologist.

(j) "Medical board" means the Medical Board of California or a division of the board.

(k) A "hearing screening" performed by a speech-language pathologist means a binary puretone screening at a preset intensity level for the purpose of determining if the screened individuals are in need of further medical or audiological evaluation.

(j) "Cerumen removal" means the nonroutine removal of cerumen within the cartilaginous ear canal necessary for access in performance of audiological procedures that shall occur under physician and surgeon supervision. Cerumen removal, as provided by this section, shall only be performed by a licensed audiologist.

Physician and surgeon supervision shall not be construed to require the physical presence of the physician, but shall include all of the following:

(1) Collaboration on the development of written standardized protocols. The protocols shall include a requirement that the supervised audiologist immediately refer to an appropriate physician any trauma, including skin tears, bleeding, or other pathology of the ear discovered in the process of cerumen removal as defined in this subdivision.

(2) Approval by the supervising physician of the written standardized protocol.

(3) The supervising physician shall be within the general vicinity, as provided by the physician-audiologist protocol, of the supervised audiologist and available by telephone contact at the time of cerumen removal.

(4) A licensed physician and surgeon may not at any one time supervise more than two audiologists for purposes of cerumen removal.

SEC. 2. Section 2532.6 is added to the Business and Professions Code, to read:

2532.6. (a) The Legislature recognizes that the education and experience requirements of this chapter constitute only minimal requirements to assure the public of professional competence. The Legislature encourages all professionals licensed and registered by the board under this chapter to regularly engage in continuing professional development and learning that is related and relevant to the professions of speech-language pathology and audiology.

(b) After January 1, 2001,the board shall not renew any license or registration pursuant to this chapter unless the applicant certifies to the board that he or she has completed in the preceding two years not less than the minimum number of continuing professional development hours established by the board pursuant to subdivision (c) for the professional practice authorized by his or her license or registration.

(c) (1) The board shall prescribe the forms utilized for and the number of hours of required continuing professional development for persons licensed or registered under this chapter.

(2) The board shall have the right to audit the records of any applicant to verify the completion of the continuing professional development requirements.

(3) Applicants shall maintain records of completion of required continuing professional development coursework for a minimum of two years and shall make these records available to the board for auditing purposes upon request.

(d) The board shall establish exceptions from the continuing professional development requirements of this section for good cause as defined by the board.

(e) (1) The continuing professional development services shall be obtained from accredited institutions of higher learning, nonprofit educational or professional associations, or other entities or organizations approved by the board, in its discretion.

(2) The continuing professional development services offered by these entities may, but are not required to, utilize pretesting and posttesting or other evaluation techniques to measure and demonstrate improved professional learning and competency.

(f) The board, by regulation, shall fund the administration of this section through professional development services provider and licensing fees to be deposited in the Speech-Language Pathology and Audiology Examining Board Fund. The fees related to the administration of this section shall be sufficient to meet, but shall not exceed, the costs of administering the corresponding provisions of this section.

(g) The continuing professional development requirements adopted by the board shall comply with any guidelines for mandatory continuing education established by the Department of Consumer Affairs.

SEC. 3. Section 2534.2 of the Business and Professions Code is amended to read:

2534.2. The amount of the fees prescribed by this chapter is that established by the following schedule:

(a) The application fee and renewal fee shall be established by the board in an amount that does not exceed one hundred fifty dollars ($150) but is sufficient to support the functions of the board that relate to the functions authorized by this chapter.

(b) The delinquency fee shall be twenty-five dollars ($25).

(c) The reexamination fee shall be established by the board in an amount which does not exceed seventy-five dollars ($75).

(d) The fee for registration of an aide shall be established by the board in an amount which does not exceed thirty dollars ($30).

(e) A fee to be set by the board of not more than one hundred dollars ($100) shall be charged for each application for approval as a speech-language pathology assistant.

(f) A fee of one hundred fifty dollars ($150) shall be charged for the issuance of and for the renewal of each approval as a speech-language pathology assistant, unless a lower fee is established by the board.

(g) The duplicate wall certificate fee is twenty-five dollars ($25).

(h) The duplicate renewal receipt fee is twenty-five dollars ($25).

(i) The application fee and renewal fee for a temporary license is thirty-dollars ($30).

SEC. 4. The heading of Article 6 (commencing with Section 2535) of Chapter 5.3 of Division 2 of the Business and Professions Code is amended to read:

Article 6. Licensing and Registration

SEC. 5. Section 2538 of the Business and Professions Code is amended and renumbered to read:

2537.4. (a) The name of a speech-language pathology corporation under which it may render professional services shall include one of the words specified in subdivision (a) of Section 2530.3 and the word "corporation" or wording or abbreviations denoting corporate existence.

(b) The name of an audiology corporation under which it may render professional services shall include one of the words specified in subdivision (b) of Section 2530.3 and the word "corporation" or wording or abbreviations denoting corporate existence.

SEC. 6. Article 7.5 (commencing with Section 2538) is added to Chapter 5.3 of Division 2 of the Business and Professions Code, to read:

Article 7.5. Speech-Language Pathology Assistant

2538. A person seeking approval as a speech-language pathology assistant shall make application to the board for that approval.

2538.1. (a) The board shall adopt regulations, in collaboration with the State Department of Education, the Commission on Teacher Credentialing, and the Advisory Commission on Special Education, that set forth standards and requirements for the adequate supervision of speech-language pathology assistants.

(b) The board shall adopt regulations as reasonably necessary to carry out the purposes of this article, that shall include, but need not be limited to, the following:

(1) Procedures and requirements for application, registration, renewal, suspension, and revocation.

(2) Standards for approval of Associate Degree Speech-Language Pathology Assistant training programs based upon standards and curriculum guidelines established by the national Council on Academic Accreditation in Audiology and Speech-Language Pathology, or the American Speech-Language-Hearing Association, or equivalent formal training programs consisting of two years of technical education, including supervised field placements.

(3) The scope of responsibility, duties, and functions of speech-language pathology assistants, that shall include, but not be limited to, all of the following:

(A) Conducting speech-language screening, without interpretation, and using screening protocols developed by the supervising speech-language pathologist.

(B) Providing direct treatment assistance to patients or clients under the supervision of a speech-language pathologist.

(C) Following and implementing documented treatment plans or protocols developed by a supervising speech-language pathologist.

(D) Documenting patient or client progress toward meeting established objectives, and reporting the information to a supervising speech-language pathologist.

(E) Assisting a speech-language pathologist during assessments, including, but not limited to, assisting with formal documentation, preparing materials, and performing clerical duties for a supervising speech-language pathologist.

(F) When competent to do so, as determined by the supervising speech-language pathologist, acting as an interpreter for non-English-speaking patients or clients and their family members.

(G) Scheduling activities and preparing charts, records, graphs, and data.

(H) Performing checks and maintenance of equipment, including, but not limited to, augmentative communication devices.

(I) Assisting with speech-language pathology research projects, in-service training, and family or community education.

The regulations shall provide that speech-language pathology assistants are not authorized to conduct evaluations, interpret data, alter treatment plans, or perform any task without the express knowledge and approval of a supervising speech-language pathologist.

(4) The requirements for the wearing of distinguishing name badges with the title of speech-language pathology assistant.

(5) Minimum continuing professional development requirements for the speech-language pathology assistant, not to exceed 12 hours in a two-year period. The speech-language pathology assistant's supervisor shall act as a professional development advisor. The speech-language pathology assistant's professional growth may be satisfied with successful completion of state or regional conferences, workshops, formal in-service presentations, independent study programs, or any combination of these concerning communication and related disorders.

(6) Minimum continuing professional development requirements for the supervisor of a speech-language pathology assistant.

(7) The type and amount of direct and indirect supervision required for speech-language pathology assistants.

(8) The maximum number of assistants permitted per supervisor.

(9) A requirement that the supervising speech-language pathologist shall remain responsible and accountable for clinical judgments and decisions and the maintenance of the highest quality and standards of practice when a speech-language pathology assistant is utilized.

2538.3. (a) A person applying for approval as a speech-language pathology assistant shall have graduated from a speech-language pathology assistant associate of arts degree program, or equivalent course of study, approved by the board. A person who has successfully graduated from a board approved bachelor's degree program in

speech-language pathology or communication disorders shall be deemed to have satisfied an equivalent course of study.

(b) On or before January 1, 2001, a speech-language pathology aide who has worked as a speech-language pathology aide for a period of at least 12 months, may make application for registration as a speech-language pathology assistant based upon the board's recognition of that aide's job training and experience and the performance of functions and tasks similar to the speech-language pathology assistant category.

2538.5. This article shall not be construed to limit the utilization of a speech aide or other personnel employed by a public school working under the direct supervision of a credentialed speech-language pathologist as set forth in subdivision (c) of Section 3051.1 of Title 5 of the California Code of Regulations.

2538.7. (a) No person who is not registered as a speech-language pathology assistant shall utilize the title speech-language pathology assistant or a similar title that includes the words speech or language when combined with the term assistant.

(b) No person who is not registered as a speech-language pathology assistant shall perform the duties or functions of a speech-language pathology assistant, except as provided by this chapter.

SEC. 7. Section 2539 of the Business and Professions Code is amended and renumbered to read:

2537.5. The board may adopt and enforce regulations to carry out the purposes and objectives of this article, and the Moscone-Knox Professional Corporation Act, including regulations requiring any of the following:

(a) That the bylaws of a speech-language pathology corporation or an audiology corporation shall include a provision whereby the capital stock of the corporation owned by a disqualified person as defined in Section 13401 of the Corporations Code, or by the estate of a deceased person shall be sold to the corporation or to the remaining shareholders of the corporation within that time as the regulations may provide.

(b) That a speech-language pathology corporation or an audiology corporation shall provide adequate security by insurance or otherwise for claims against it by its patients arising out of the rendering of professional services.

SEC. 8. Section 56363 of the Education Code is amended to read:

56363. (a) Designated instruction and services as specified in the individualized education program shall be available when the instruction and services are necessary for the pupil to benefit educationally from his or her instructional program. The instruction and services shall be provided by the regular class teacher, the special class teacher, or the resource specialist if the teacher or specialist is competent to provide the instruction and services and if the provision of the instruction and services by the teacher or specialist

is feasible. If not, the appropriate designated instruction and services specialist shall provide the instruction and services. Designated instruction and services shall meet standards adopted by the board.

(b) These services may include, but are not limited to, the following:

(1) Language and speech development and remediation. The language and speech development and remediation services may be provided by a speech-language pathology assistant as defined in subdivision (f) of Section 2530.2 of the Business and Professions Code.

(2) Audiological services.

(3) Orientation and mobility instruction.

(4) Instruction in the home or hospital.

(5) Adapted physical education.

(6) Physical and occupational therapy.

(7) Vision services.

(8) Specialized driver training instruction.

(9) Counseling and guidance.

(10) Psychological services other than assessment and development of the individualized education program.

(11) Parent counseling and training.

(12) Health and nursing services.

(13) Social worker services.

(14) Specially designed vocational education and career development.

(15) Recreation services.

(16) Specialized services for low-incidence disabilities, such as readers, transcribers, and vision and hearing services.

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 1059

An act to amend Section 53 of Chapter 330 of the Statutes of 1998, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 53 of Chapter 330 of the Statutes of 1998 is amended to read:

Sec. 53. The sum of three million thirty thousand dollars ($3,030,000) is reappropriated from the Proposition 98 Reversion Account to the Superintendent of Public Instruction in accordance with all of the following:

(a) Twenty thousand dollars ($20,000) for allocation on a one-time basis to the Pasadena Unified School for the purchase of textbooks for a tutoring program.

(b) Eighty thousand dollars ($80,000) for allocation on a one-time basis to the Santa Paula Unified School District for the purpose of renovating a swimming pool.

(c) Fifty thousand dollars ($50,000) for allocation on a one-time basis to the Montebello Unified School District for the purpose of purchasing school security devices.

(e) One hundred eighty thousand dollars ($180,000) for allocation on a one-time basis to the Los Angeles County Office of Education for the purpose of developing middle school civic education curricula.

(g) Two hundred thousand dollars ($200,000) for allocation on a one-time basis to the Superintendent of Public Instruction, for allocation on a grant basis to local educational agencies for support of home economics careers programs, pursuant to legislation enacted in the 1997–98 Regular Session.

(j) Five hundred thousand dollars ($500,000) for allocation on a one-time basis to the Lucia Mar School District for the purpose of constructing a performing arts center.

(k) Three hundred thousand dollars ($300,000) for allocation on a one-time basis to the Los Angeles Unified School District for the purpose of support of the California Arts Initiative.

(m) One million dollars ($1,000,000) for allocation on a one-time basis to the Superintendent of Public Instruction, for allocation on a grant basis to local educational agencies, for the purpose of high school coaching training, pursuant to legislation enacted in the 1997–98 Regular Session.

(n) Seven hundred thousand dollars ($700,000) for allocation on a one-time basis to the Los Alamitos Unified School District for the purpose of support of the Los Alamitos High School for the Arts.

SEC. 2. The sum of four hundred thousand dollars ($400,000) is hereby appropriated from the Proposition 98 Reversion Account to the Chancellor of the California Community Colleges for allocation to the Rancho Santiago Community College District for the IDEA Institute in Santa Ana.

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 the Budget Act of 1998 with respect to the public schools, it is necessary that this act take effect immediately.

CHAPTER 1060

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

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

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

(a) El Niño climatic conditions in 1997 and 1998 caused a collapse of the squid fishery and depressed other fisheries, and as a result, landing taxes paid to the Department of Fish and Game from commercial fisheries plummeted by more than one million dollars ($1,000,000) in 1998.

(b) Extreme El Niño climatic conditions dramatically delayed or reduced sport fishing opportunities across the state, and as a result, sport fishing license fees paid to the department plummeted by more than six million dollars ($6,000,000) in 1998.

(c) The department depends on these commercial and sport fishing taxes and fees to fund base programs, including fishing and hunting programs.

SEC. 2. The sum of seven million dollars ($7,000,000) is hereby appropriated from the General Fund to the Fish and Game Preservation Fund.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the Department of Fish and Game is able to adequately execute its statutory duties relating to fish and wildlife management and environmental review, it is necessary that this act take effect immediately.

CHAPTER 1061

An act to add Section 1209.5 to the Penal Code, relating to penalties.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1209.5 is added to the Penal Code, to read:

1209.5. Notwithstanding any other provision of law, any person convicted of an infraction may, upon a showing that payment of the total fine would pose a hardship on the defendant or his or her family, be sentenced to perform community service in lieu of the total fine that would otherwise be imposed. The defendant shall perform community service at the hourly rate applicable to community service work performed by criminal defendants. For purposes of this section, the term "total fine" means the base fine and all assessments, penalties, and additional moneys to be paid by the defendant. For purposes of this section, the hourly rate applicable to community service work by criminal defendants shall be determined by dividing the total fine by the number of hours of community service ordered by the court to be performed in lieu of the total fine.

CHAPTER 1062

An act to amend Section 103625 of the Health and Safety Code, relating to vital records.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 103625 of the Health and Safety Code is amended to read:

103625. (a) A fee of three dollars ($3) shall be paid by the applicant for a certified copy of a fetal death or death record.

(b) (1) A fee of three dollars ($3) shall be paid by a public agency or licensed private adoption agency applicant for a certified copy of a birth certificate that the agency is required to obtain in the ordinary course of business. A fee of seven dollars ($7) shall be paid by any other applicant for a certified copy of a birth certificate. Four dollars ($4) of any seven-dollar ($7) fee is exempt from subdivision (e) and shall be paid either to a county children's trust fund or to the State Children's Trust Fund, in conformity with Article 5 (commencing

with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(2) The board of supervisors of any county that has established a county children's trust fund may increase the fee for a certified copy of a birth certificate by up to three dollars ($3) for deposit in the county children's trust fund in conformity with Article 5 (commencing with Section 18965) of Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code.

(3) The board of supervisors of any county may increase the fee for a certified copy of a birth certificate by up to three dollars ($3) through June 30, 1999, or until any earlier date upon which the board of supervisors finds that the fee is no longer necessary for dependency mediation funding, the proceeds of which shall be used solely for the purpose of providing dependency mediation services in the juvenile court. Public agencies shall be exempt from paying this portion of the fee. However, if a county increases this fee, neither the revenue generated from the fee increase nor the increased expenditures made for these services shall be considered in determining the court's progress towards achieving its cost reduction goals pursuant to Section 68113 of the Government Code if the net effect of the revenue and expenditures is a cost increase. In each county that increases the fee pursuant to this paragraph, up to 5 percent of the revenue generated from the fee increase may be apportioned to the county recorder for the additional accounting costs of the program.

(c) A fee of three dollars ($3) shall be paid by a public agency applicant for a certified copy of a marriage record, that has been filed with the county recorder or county clerk, that the agency is required to obtain in the ordinary course of business. A fee of six dollars ($6) shall be paid by any other applicant for a certified copy of a marriage record that has been filed with the county recorder or county clerk. Three dollars ($3) of any six-dollar ($6) fee is exempt from subdivision (e) and shall be transmitted monthly by each local registrar, county recorder, and county clerk to the state for deposit into the General Fund as provided by Section 1852 of the Family Code.

(d) A fee of three dollars ($3) shall be paid by a public agency applicant for a certified copy of a marriage dissolution record obtained from the State Registrar that the agency is required to obtain in the ordinary course of business. A fee of six dollars ($6) shall be paid by any other applicant for a certified copy of a marriage dissolution record obtained from the State Registrar.

(e) Each local registrar, county recorder, or county clerk collecting a fee pursuant to this section shall transmit 15 percent of the fee for each certified copy to the State Registrar by the 10th day of the month following the month in which the fee was received.

(f) The additional three dollars ($3) authorized to be charged to applicants other than public agency applicants for certified copies of

marriage records by subdivision (c) may be increased pursuant to Section 114.

(g) In providing for the expiration of the surcharge on birth certificate fees on June 30, 1999, the Legislature intends that juvenile dependency mediation programs pursue ancillary funding sources after that date.

CHAPTER 1063

An act to add Section 1793.26 to the Civil Code, relating to motor vehicles.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1793.26 is added to the Civil Code, to read:

1793.26. (a) Any automobile manufacturer, importer, or distributor who reacquires, or who assists a dealer or lienholder in reacquiring, a motor vehicle, whether by judgment, decree, arbitration award, settlement agreement, or voluntary agreement, is prohibited from doing either of the following:

(1) Requiring, as a condition of the reacquisition of the motor vehicle, that a buyer or lessee who is a resident of this state agree not to disclose the problems with the vehicle experienced by the buyer or lessee or the nonfinancial terms of the reacquisition.

(2) Including, in any release or other agreement, whether prepared by the manufacturer, importer, distributor, dealer, or lienholder, for signature by the buyer or lessee, a confidentiality clause, gag clause, or similar clause prohibiting the buyer or lessee from disclosing information to anyone about the problems with the vehicle, or the nonfinancial terms of the reacquisition of the vehicle by the manufacturer, importer, distributor, dealer, or lienholder.

(b) Any confidentiality clause, gag clause, or similar clause in such a release or other agreement in violation of this section shall be null and void as against the public policy of this state.

(c) Nothing in this section is intended to prevent any confidentiality clause, gag clause, or similar clause regarding the financial terms of the reacquisition of the vehicle.

CHAPTER 1064

An act to add Section 1367.54 to the Health and Safety Code, and to add Section 10123.184 to the Insurance Code, relating to health insurance.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1367.54 is added to the Health and Safety Code, to read:

1367.54. Every group health care service plan contract that provides maternity benefits, except for a specialized health care service plan contract, that is issued, amended, renewed, or delivered on or after January 1, 1999, and every individual health care service plan contract of a type and form first offered for sale on or after January 1, 1999, that provides maternity benefits, except a specialized health care service plan contract, shall provide coverage for participation in the Expanded Alpha Feto Protein (AFP) program, which is a statewide prenatal testing program administered by the State Department of Health Services. Notwithstanding any other provision of law, a health care service plan that provides maternity benefits shall not require participation in the statewide prenatal testing program administered by the State Department of Health Services as a prerequisite to eligibility for, or receipt of, any other service.

SEC. 2. Section 10123.184 is added to the Insurance Code, immediately following Section 10123.18, to read:

10123.184. Every group policy of disability insurance that covers hospital, medical, or surgical expenses, and that provides maternity benefits, that is issued, amended, renewed, or delivered on or after January 1, 1999, and every individual policy of disability insurance that covers hospital, medical, or surgical expenses, and that provides maternity benefits, that is of a type and form first offered for sale on or after January 1, 1999, shall provide coverage for participation in the Expanded Alpha Feto Protein (AFP) program, which is a statewide prenatal testing program administered by the State Department of Health Services. Notwithstanding any other provision of law, a disability insurer that provides coverage for maternity benefits shall not require participation in the statewide prenatal testing program administered by the State Department of Health Services as a prerequisite to eligibility for, or receipt of, any other service.

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 1065

An act to amend Section 647a of the Penal Code, and to add Article 5.4 (commencing with Section 1790) to Chapter 1 of Division 2.5 of the Welfare and Institutions Code, relating to the Runaway Youth and Families in Crisis Project.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 647a of the Penal Code is amended to read:

647a. (a) Any peace officer, as defined in subdivision (a) of Section 830.1 or Section 830.31, 830.32, or 830.33, may transport any person, as quickly as is feasible, to the nearest homeless shelter, or any runaway youth or youth in crisis to the nearest runaway shelter, if the officer inquires whether the person desires the transportation, and the person does not object to the transportation. Any officer exercising due care and precaution shall not be liable for any damages or injury incurred during transportation.

(b) Notwithstanding any other provision of law, this section shall become operative in a county only if the board of supervisors adopts the provisions of this section by ordinance. The ordinance shall include a provision requiring peace officers to determine the availability of space at the nearest homeless or runaway shelter prior to transporting any person.

SEC. 2. Article 5.4 (commencing with Section 1790) is added to Chapter 1 of Division 2.5 of the Welfare and Institutions Code, to read:

Article 5.4. Runaway Youth and Families in Crisis Project

1790. The Legislature finds and declares all of the following:

(a) A tremendous percentage of juveniles who commit status offenses including, but not limited to, running away, school truancy and incorrigibility, ultimately enter the juvenile justice system for subsequently engaging in delinquent, otherwise criminal behavior.

(b) In 1990, it was estimated that 48,629 youths ran away from their homes in California.

(c) In 1989, 776 runaway youths served by 33 nonprofit youth-runaway shelters in California, surveyed during a one-month period, identified one or more of the following as a problem:

(1) Family crisis	73%
(2) School problems	63%
(3) Victims of crime/abuse	57%
(4) Homeless/runaway	55%
(5) Substance abuse	43%
(6) Delinquent behavior	26%
(7) Other	9%

(d) It is estimated that 43 emergency shelters presently serve runaway youths as well as homeless youths and adults in California.

(e) It is estimated that 10 transitional living facilities are operated presently in California to provide youths with independent living skills, employment skills, and home responsibilities.

(f) It is conservatively projected that by the year 2000 there will be a deficit of 1,222 emergency shelter beds and 930 long-term beds statewide.

(g) Resources for runaway, homeless, and at-risk youth and their families are severely inadequate to meet their needs.

(h) The Counties of Fresno, Sacramento, San Bernardino, and Solano either (1) do not provide temporary or long-term shelter services or family crises services to runaway, homeless, and nonrunaway youth, or (2) do provide such services but at levels which substantially fail to meet the need.

The purpose of this chapter, therefore, is to establish three-year pilot projects in San Joaquin Central Valley, in the northern region of California, and in the southern region of California, whereby each project will provide temporary shelter services, transitional living shelter services, and low-cost family crisis resolution services based on a sliding fee scale to runaway youth, nonrunaway youth, and their working families. It is the intent of this chapter that services will be provided to prevent at-risk youth from engaging in delinquent and criminal behavior and to reduce the numbers of at-risk families from engaging in neglectful, abusive, and criminal behavior.

1791. Each Runaway Youth and Families in Crisis Project established under this chapter shall provide services which shall include, but not be limited to, all of the following:

(a) Temporary shelter and related services to runaway youth. The services shall include:

(1) Food and access to overnight shelter for no more than 14 days.

(2) Counseling and referrals to services which address immediate emotional needs or problems.

(3) Screening for basic health needs and referral to public and private health providers for health care. Shelters that are not equipped to house a youth with substance abuse problems shall refer that youth to an appropriate clinic or facility. The shelter shall monitor the youth's progress and assist the youth with services upon his or her release from the substance abuse facility.

(4) Long-term planning so that the youth may be returned to the home of the parent or guardian under conditions which favor long-term reunification with the family, or so the youth can be suitably placed in a situation outside of the parental or guardian home when such reunification is not possible.

(5) Outreach services and activities to locate runaway youth and to link them with project services.

(b) Family crisis resolution services to runaway and nonrunaway youth and their families which shall include:

(1) Parent training.

(2) Family counseling.

(3) Services designed to reunify youth and their families.

(4) Referral to other services offered in the community by public and private agencies.

(5) Long-term planning so that the youth may be returned to the home of the parent or guardian under conditions which favor long-term reunification with the family, or so the youth can be suitably placed in a situation outside of the parental or guardian home when such reunification is not possible.

(6) Followup services to ensure that the return to the parent or guardian or the placement outside of the parental or guardian home is stable.

(7) Outreach services and activities to locate runaway and nonrunaway youth and to link them with project services.

(c) Transitional living services shall include:

(1) Long-term shelter.

(2) Independent living skill services.

(3) Preemployment and employment skills training.

(4) Home responsibilities training.

(d) Where appropriate and necessary, some of the services identified under this section must also be provided in the local community and in the home of project clients. Projects shall notify parents that their children are staying at a project site consistent with state and federal parent notification requirements.

1792. (a) A Runaway Youth and Families in Crisis Project shall be established in one or more counties in the San Joaquin Central Valley, in one or more counties in the northern region of California, and in one or more counties in the southern region of California. Each project may have one central location, or more than one site, in order to effectively serve the target population.

(b) The Office of Criminal Justice Planning shall prepare and disseminate a request for proposals to prospective grantees under

this chapter within four months after this chapter has been approved and enacted by the Legislature. The Office of Criminal Justice Planning shall enter into grant award agreements for a period of no less than three years, and the operation of projects shall begin no later than four months after grant award agreements are entered into between the Office of Criminal Justice Planning and the grantee. Grants shall be awarded based on the quality of the proposal, the documented need for services in regard to runaway youth, and to organizations, as specified in subdivision (d) of this section, in localities that receive a disproportionately low share of existing federal and state support for youth shelter programs.

(c) The Office of Criminal Justice Planning shall require applicants to identify, in their applications, measurable outcomes by which the Office of Criminal Justice Planning will measure the success of the applicant's project. These measurable outcomes shall include, but not be limited to, the number of clients served and the percentage of clients who are successfully returned to the home of a parent or guardian or to an alternate living condition when reunification is not possible.

(d) Only private, nonprofit organizations shall be eligible to apply for funds under this chapter to operate a Runaway Youth and Families in Crisis Project, and these organizations shall be required to annually contribute a local match of at least 15 percent in cash or in-kind contribution to the project during the term of the grant award agreement. Preference shall be given to organizations that demonstrate a record of providing effective services to runaway youth or families in crisis for at least three years, successfully operating a youth shelter for runaway and homeless youth, or successfully operating a transitional living facility for runaway and homeless youth who do not receive transitional living services through the juvenile justice system. Additional weight shall also be given to those organizations that demonstrate a history of collaborating with other agencies and individuals in providing such services. Priority shall be given to organizations with existing facilities. Preference shall also be given to organizations that demonstrate the ability to progressively decrease their reliance on resources provided under this chapter and to operate this project beyond the period that the organization receives funds under this chapter.

1793. The Office of Criminal Justice Planning shall monitor and evaluate the six projects established under this chapter, and shall report to the Legislature after the first and third year of the program's operation the results of its evaluation. In addition, each project shall be responsible for evaluating the effectiveness of their respective programs and services.

SEC. 3. Funding for the Runaway Youth and Families in Crisis Project shall be provided to the extent funds are made available in the annual Budget Act, and up to 3 percent of that amount shall be

transferred each year to the Office of Criminal Justice Planning, upon the approval of the Director of Finance, for expenditure as necessary to administer, monitor, evaluate, and report the results of this project. No applicant shall receive a grant under this section in an amount that exceeds the total amount of funds appropriated in the annual Budget Act for this project, minus the 3 percent for the Office of Criminal Justice Planning, divided by the number of counties participating in the project.

CHAPTER 1066

An act to amend Section 60800 of the Education Code, relating to physical education.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 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) On the eve of the 1996 Centennial Olympic Games, the United States Department of Health and Human Services published the first Surgeon General's report on physical activity and health.

(2) Key State Department of Education publications, national reports by Governors and the Congress, and federal legislation about the goals of education establish as a high priority the preparation of students for productive employment.

(3) Research clearly supports the need for emphasis in the school curriculum on physical fitness and motor skills development, which relate to productive performance in all workplaces.

(4) The key finding of the United States Surgeon General's Report on Physical Activity and Health was that the quality of life of every individual can be improved through lifelong participation in appropriate physical activity. There is strong evidence to indicate that regular physical activity provides clear and substantial gains in health and performance achievements.

(5) Increasing participation in physical activity is a formidable contemporary challenge that must be met by all components of society. Leadership in this endeavor must be drawn from educators, health professionals, families, businesses, and community leaders, as well as from the communications media and the entertainment industry.

(6) Effective strategies to increase an active lifestyle have taken place in settings as diverse as physical education classes in schools, health and physical fitness promotion programs at worksites, and one-on-one counseling by health care providers.

(7) Almost half of young people 12 to 21 years of age, inclusive, and more than a third of high school pupils, do not participate in vigorous physical activity on a regular basis.

(8) Seventy-two percent of 9th graders participate in vigorous physical activity on a regular basis, compared with only 55 percent of 12th graders.

(9) Daily participation in physical education classes by high school students dropped from 42 percent in 1991 to 25 percent in 1995.

(10) The time students spend being active in physical education classes is decreasing. Among high school students enrolled in a physical education class, the percentage who were active for at least 20 minutes during an average class dropped from 81 percent in 1991 to 70 percent in 1995.

(11) Inactivity and poor nutrition cause at least 300,000 deaths per year in the United States.

(12) It is estimated that, in the year 2000, there will be 23,000,000 men and women 18 years of age and older in the United States in jobs requiring significant development of physical fitness and motor skills.

(13) There are 3,700,000 men and women on active duty and active reserve in the United States Armed Forces where high levels of physical fitness are required. A two-year study of soldier fitness has shown that this is the first time in history that the physical conditioning of parents is better than that of incoming soldiers. New recruits cannot meet the minimum fitness standards achieved by new soldiers 10 years ago. The military considers this to be its single biggest problem.

(14) Adequate physical fitness contributes to improved performance in sedentary occupations.

(15) Successful, safe, and satisfying performance by individuals of any age will come only if they have acquired the necessary concepts and knowledge, levels of the components of physical fitness, and specific motor skills.

(16) In the interest of national defense, the public schools must produce graduates who meet at least the minimum physical fitness standards for admission to the military services.

(17) The United States Surgeon General's Report on Physical Activity and Health recognizes that inactivity and poor nutrition among children are serious health issues and that there is strong evidence to indicate that regular physical activity provides clear and substantial gains in health and performance achievements.

(b) The Legislature intends all of the following:

(1) That school administrators, physical educators, health care services personnel, classroom teachers, secondary school coaches, health educators, and counselors, whose central task is to foster the physical and mental well-being of children, are encouraged to make a firm commitment to incorporate into the curriculum, when appropriate, the health and performance benefits of regular appropriate physical activity.

(2) That, in adopting a course of study in physical education pursuant to subdivision (g) of Section 51210 or subdivision (d) of Section 51220, the governing board of a school district is encouraged to consider the curriculum framework for physical education adopted by the State Board of Education pursuant to Section 60200 and any regulations adopted or information distributed by the Department of Education pursuant to Section 33350.

(3) That, in implementing programs in physical education pursuant to Sections 51222 and 51223, the governing board of a school district is encouraged to consider the curriculum framework for physical education adopted by the State Board of Education pursuant to Section 60200 and any regulations adopted or information distributed by the Department of Education pursuant to Section 33350.

(4) That, in implementing the courses in physical education required pursuant to subparagraph (F) of paragraph (1) of subdivision (a) of Section 51225.3, the governing board of a school district and school district personnel are encouraged to consider the curriculum framework for physical education adopted by the State Board of Education pursuant to Section 60200 and any regulations adopted or information distributed by the Department of Education pursuant to Section 33350.

SEC. 2. Section 60800 of the Education Code is amended to read:

60800. (a) During the month of March, April, or May, the governing board of each school district maintaining any of grades 5, 7, and 9 shall administer to each pupil in those grades the physical performance test designated by the State Board of Education. Each physically handicapped pupil and each pupil who is physically unable to take all of the physical performance test shall be given as much of the test as his or her condition will permit.

(b) Upon request of the State Department of Education, a school district shall submit to the department, at least once every two years, the results of its physical performance testing.

(c) The State Department of Education shall compile the results of the physical performance test and submit a report every two years, by December 31, to the Legislature and Governor that standardizes the data, tracks the development of high-quality fitness programs, and compares the performance of California's pupils with national performance, to the extent that funding is available.

CHAPTER 1067

An act to amend Sections 10232.25, 10232.8, 10233.5, and 10234.87 of, and to add and repeal Section 10232.23 of, the Insurance Code, relating to long-term care insurance.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 10232.23 is added to the Insurance Code, to read:

10232.23. (a) It is the intent of the Legislature that if a federal law is enacted, or the United States Department of the Treasury issues a decision, declaring that the benefits paid under long-term care insurance policies or certificates that are not intended to be federally qualified are either taxable or nontaxable as income, that policyholders of long-term care insurance sold pursuant to subdivision (a) of Section 10232.2 shall be given a one-time opportunity to exchange their long-term care policy.

(b) Within 90 days of the effective date of a change in federal law or a United States Department of the Treasury decision specified in subdivision (a), the department shall adopt emergency regulations to require insurers that offer and market, pursuant to subdivision (a) of Section 10232.2, both policies of long-term care insurance intended to be federally qualified and policies of long-term care insurance not intended to be federally qualified, to do the following:

(1) Offer policyholders of federally qualified long-term care insurance policies an opportunity to exchange their policies for similar policies not intended to be federally qualified.

(2) Offer policyholders of policies not intended to be federally qualified an opportunity to exchange their policies for similar policies that are intended to be federally qualified.

(c) The emergency regulations shall include, at a minimum, the following:

(1) A requirement that policyholders be allowed a one-time opportunity to exchange policies on a guaranteed issuance basis, without new underwriting, new probationary periods, or new elimination or contestibility periods. However, insurers shall not be required to make the exchange if the insured is either receiving long-term care benefits under the policy or would become immediately eligible for benefits as a result of the exchange. Insurers shall be allowed to lower or increase the premium as a result of the exchange, with the new premium to be based on the age of the policyholder or certificate holder at the time the previous policy was issued. In no event shall insurers be required to apply rate increases or decreases retroactively. In the event the premium changes, the insurer shall clearly describe the benefit differences and any other factors that warrant the changes. The department may allow insurers to provide the offer through a rider.

(2) A requirement that insurers, within 30 days of approval of amended policies or riders, as required by the emergency regulations, notify policyholders in writing of their right to exchange

their policies for similar policies or department-approved riders within 90 days of receipt of the notice from the insurer.

(d) The department shall, to the maximum extent practicable, taking into consideration any change in federal law or a decision by the United States Department of the Treasury as specified in subdivision (a), adopt a standardized notice form that insurers shall use to comply with the requirements of paragraph (2) of subdivision (c).

(e) Any policies, certificates, or riders used by insurers to comply with this section shall be filed with the department for review and approval, and shall be in the form of a previously approved policy or certificate with highlighted changes, if any, to the previously approved policy or certificate, unless submitted by rider pursuant to department authorization in emergency regulations.

(f) The standardized notice form developed by the department pursuant to subdivision (d) indicating a one-time opportunity to exchange a long-term care policy shall be made available by employers to employees and dependents who are offered by employers a choice of the two types of policies described in Section 10232.2 and who receive coverage.

(g) This section shall become inoperative on July 1, 2001, and as of January 1, 2002, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2002, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 10232.25 of the Insurance Code is amended to read:

10232.25. (a) Each insurer that offers long-term care coverage pursuant to Section 10232.2 shall make available at the time of a solicitation the following notice in a separate document, in 12-point type, to be signed and dated by the applicant and agent or insurer, with a copy provided to the applicant and the original maintained in accordance with paragraph (8) of subdivision (c) of Section 10508:

IMPORTANT NOTICE

THIS COMPANY OFFERS TWO TYPES OF LONG-TERM CARE POLICIES IN CALIFORNIA:

(1) LONG-TERM CARE POLICIES (OR CERTIFICATES) INTENDED TO QUALIFY FOR FEDERAL AND STATE OF CALIFORNIA TAX BENEFITS.

AND

(2) LONG-TERM CARE POLICIES (OR CERTIFICATES) THAT MEET CALIFORNIA STANDARDS AND ARE NOT INTENDED TO QUALIFY FOR FEDERAL OR STATE OF CALIFORNIA TAX BENEFITS BUT WHICH MAY MAKE IT EASIER TO QUALIFY FOR LONG-TERM CARE BENEFITS.

(1) POLICIES INTENDED TO QUALIFY FOR TAX BENEFITS	(2) POLICIES NOT INTENDED TO QUALIFY FOR TAX BENEFITS
(A) ELIGIBILITY FOR BENEFITS	**(A) ELIGIBILITY FOR BENEFITS**
You will not be paid for any long-term care benefits you need until: You are unable to do 2 out of 6 ADLs (Activities of Daily Living) which include: — bathing — dressing — continence — toileting — transferring — eating OR You need help due to Severe Cognitive Impairment (Please see the outline of coverage for a definition of each of the above ADL terms)	You will not be paid for any long-term care benefits you need until: You are unable to do 2 out of 7 ADLs (Activities of Daily Living) which include: — bathing — dressing — continence — toileting — transferring — eating or — ambulating (this added ADL may make it easier to qualify for home care benefits) OR You need help due to Cognitive Impairment (Please see the outline of coverage for a definition of each of the above ADL terms)
A health care practitioner must certify that the insured will need assistance with Activities of Daily Living for at least a period of 90 days.	No 90-day certification requirement. Some policies may provide benefits for serious illnesses of less than 90 days. (Please see the outline of coverage for your policy provisions)
In general, no policy benefits can be paid for services covered by Medicare or be applied to pay for Medicare deductibles or copayments.	In general, there are no limitations regarding the use of policy benefits for Medicare-related services.

(B) FEDERAL AND STATE TAX TREATMENT	(B) FEDERAL AND STATE TAX TREATMENT
Premiums are intended to be deductible as a medical expense if you itemize deductions on your tax returns. —Medical expenses must exceed 7.5% of your adjusted gross income. —The amount you can deduct is capped, based on your age and adjusted gross income.	Premiums are not intended to be deductible on your tax returns.
Benefits paid under the policy are not intended to be taxed as income.	Benefits paid under the policy may or may not be taxed as income. Should the IRS treat these benefits as taxable income, the costs you pay for care may or may not be eligible as an offsetting tax deduction. Neither federal law, nor the IRS, has taken a position on these issues.

If you have further questions regarding your choice of policies, you may wish to contact your local Health Insurance Counseling and Advocacy Program (**HICAP**) office which provides long-term care insurance counseling free of charge. Your insurance agent or insurer is required to provide you with the name, address and telephone number of your local HICAP office. The statewide HICAP telephone number is 1-800-434-0222.

As noted above, long-term care benefits paid under policies that meet California standards but that are not intended to qualify for tax benefits may or may not be taxable as income. If the U.S. Congress or the IRS resolves this issue, you will be provided a one-time opportunity to **EXCHANGE POLICIES.** If this issue is resolved, you will be notified by your insurer that you may exchange your policy regardless of whether you purchased a policy intended to qualify for tax benefits or one that is not intended to qualify for tax benefits. The exchanged policy will be issued without any additional evidence of insurability and the new policy premium (which may be lower or higher) will be based on your age at the time you were issued the original policy. However, you will not be allowed to exchange policies if you are receiving long-term care benefits under your policy at the time of the notice, or if the exchange would make you immediately eligible to receive benefits.

If you have questions about the potential tax impacts of these two types of policies, you may wish to consult a **TAX ADVISER** before deciding which type of policy you wish to purchase.

Your agent or insurer is required by law to provide you with this form which displays the major differences between these two types of policies. Before signing this disclosure form and your application, please discuss with your agent or insurer the above side-by-side comparison information regarding these two types of policies.

Applicant_____ Agent or Insurer_____

Date:_____ Date:_____

A copy of this form is to be provided to the applicant.

(b) The notice required by subdivision (a) shall be made available by employers to employees and dependents who are offered by employers a choice of the two types of policies described and apply for coverage.

(c) The commissioner, after consulting with the Health Insurance Counseling and Advocacy Program, and after issuing a public notice and receiving public comments, may approve modifications to the language in the notice set forth in subdivision (a), if the modifications (1) are warranted based on federal or state laws, federal regulations, or other relevant federal decisions, and (2) are strictly limited to those necessary to ensure that the summary notice required by this section does not provide false or misleading information.

SEC. 3. Section 10232.8 of the Insurance Code is amended to read:

10232.8. (a) In every long-term care policy or certificate that is not intended to be a federally qualified long-term care insurance contract and provides home care benefits, the threshold establishing eligibility for home care benefits shall be at least as permissive as a provision that the insured will qualify if either one of two criteria are met:

(1) Impairment in two out of seven activities of daily living.

(2) Impairment of cognitive ability.

The policy or certificate may provide for lesser but not greater eligibility criteria. The commissioner, at his or her discretion, may approve other criteria or combinations of criteria to be substituted, if the insurer demonstrates that the interest of the insured is better served.

"Activities of daily living" in every policy or certificate that is not intended to be a federally qualified long-term care insurance contract and provides home care benefits shall include eating, bathing, dressing, ambulating, transferring, toileting, and continence; "impairment" means that the insured needs human assistance, or needs continual substantial supervision; and "impairment of cognitive ability" means deterioration or loss of intellectual capacity due to organic mental disease, including Alzheimer's disease or related illnesses, that requires continual supervision to protect oneself or others.

(b) In every long-term care policy approved or certificate issued after the effective date of the act adding this section, that is intended to be a federally qualified long-term care insurance contract as described in subdivision (a) of Section 10232.1, the threshold establishing eligibility for home care benefits shall provide that a chronically ill insured will qualify if either one of two criteria are met or if a third criterion, as provided by this subdivision, is met:

(1) Impairment in two out of six activities of daily living.

(2) Impairment of cognitive ability.

Other criteria shall be used in establishing eligibility for benefits if federal law or regulations allow other types of disability to be used applicable to eligibility for benefits under a long-term care insurance

policy. If federal law or regulations allow other types of disability to be used, the commissioner shall promulgate emergency regulations to add those other criteria as a third threshold to establish eligibility for benefits. Insurers shall submit policies for approval within 60 days of the effective date of the regulations. With respect to policies previously approved, the department is authorized to review only the changes made to the policy. All new policies approved and certificates issued after the effective date of the regulation shall include the third criterion. No policy shall be sold that does not include the third criterion after one year beyond the effective date of the regulations. An insured meeting this third criterion shall be eligible for benefits regardless of whether the individual meets the impairment requirements in paragraph (1) or (2) regarding activities of daily living and cognitive ability.

(c) A licensed health care practitioner, independent of the insurer, shall certify that the insured meets the definition of "chronically ill individual" as defined under Public Law 104-191. In the event a health care practitioner makes a determination, pursuant to this section, that an insured does not meet the definition of "chronically ill individual," the insurer shall notify the insured that the insured shall be entitled to a second assessment by a licensed health care practitioner, upon request, who shall personally examine the insured. The requirement for a second assessment shall not apply if the initial assessment was performed by a practitioner who otherwise meets the requirements of this section and who personally examined the insured. The assessments conducted pursuant to this section shall be performed promptly with the certification completed as quickly as possible to ensure that an insured's benefits are not delayed. The written certification shall be renewed every 12 months. A licensed health care practitioner shall develop a written plan of care after personally examining the insured. The costs to have a licensed health care practitioner certify that an insured meets, or continues to meet, the definition of "chronically ill individual," or to prepare written plans of care shall not count against the lifetime maximum of the policy or certificate. In order to be considered "independent of the insurer," a licensed health care practitioner shall not be an employee of the insurer and shall not be compensated in any manner that is linked to the outcome of the certification. It is the intent of this subdivision that the practitioner's assessments be unhindered by financial considerations. This subdivision shall apply only to a policy or certificate intended to be a federally qualified long-term insurance contract.

(d) "Activities of daily living" in every policy or certificate intended to be a federally qualified long-term care insurance contract as provided by Public Law 104-191 shall include eating, bathing, dressing, transferring, toileting, and continence; "impairment in activities of daily living" means the insured needs "substantial assistance" either in the form of "hands-on assistance" or

"standby assistance," due to a loss of functional capacity to perform the activity; "impairment of cognitive ability" means the insured needs substantial supervision due to severe cognitive impairment; "licensed health care practitioner" means a physician, registered nurse, licensed social worker, or other individual whom the Secretary of the United States Department of the Treasury may prescribe by regulation; and "plan of care" means a written description of the insured's needs and a specification of the type, frequency, and providers of all formal and informal long-term care services required by the insured, and the cost, if any.

(e) Until the time that these definitions may be superseded by federal law or regulation, the terms "substantial assistance," "hands-on assistance," "standby assistance," "severe cognitive impairment," and "substantial supervision" shall be defined according to the safe-harbor definitions contained in Internal Revenue Service Notice 97-31, issued May 6, 1997.

(f) The definitions of "activities of daily living" to be used in policies and certificates that are intended to be federally qualified long-term care insurance shall be the following until the time that these definitions may be superseded by federal law or regulations:

(1) Eating, which shall mean feeding oneself by getting food in the body from a receptacle (such as a plate, cup, or table) or by a feeding tube or intravenously.

(2) Bathing, which shall mean washing oneself by sponge bath or in either a tub or shower, including the act of getting into or out of a tub or shower.

(3) Continence, which shall mean the ability to maintain control of bowel and bladder function; or when unable to maintain control of bowel or bladder function, the ability to perform associated personal hygiene (including caring for a catheter or colostomy bag).

(4) Dressing, which shall mean putting on and taking off all items of clothing and any necessary braces, fasteners, or artificial limbs.

(5) Toileting, which shall mean getting to and from the toilet, getting on or off the toilet, and performing associated personal hygiene.

(6) Transferring, which shall mean the ability to move into or out of bed, a chair or wheelchair.

The commissioner may approve the use of definitions of "activities of daily living" that differ from the verbatim definitions of this subdivision if these definitions would result in more policy or certificate holders qualifying for long-term care benefits than would occur by the use of the verbatim definitions of this subdivision. In addition, the following definitions may be used without the approval of the commissioner: (1) the verbatim definitions of eating, bathing, dressing, toileting, transferring, and continence in subdivision (g); or (2) the verbatim definitions of eating, bathing, dressing, toileting, and continence in this subdivision and a substitute, verbatim definition of "transferring" as follows: "transferring," which shall

mean the ability to move into and out of a bed, a chair, or wheelchair, or ability to walk or move around inside or outside the home, regardless of the use of a cane, crutches, or braces.

The definitions to be used in policies and certificates for impairment in activities of daily living, "impairment in cognitive ability," and any third eligibility criterion adopted by regulation pursuant to subdivision (b), shall be the verbatim definitions of these benefit eligibility triggers allowed by federal regulations. In addition to the verbatim definitions, the commissioner may approve additional descriptive language to be added to the definitions, if the additional language is (1) warranted based on federal or state laws, federal or state regulations, or other relevant federal decision, and (2) strictly limited to that language which is necessary to ensure that the definitions required by this section are not misleading to the insured.

(g) The definitions of "activities of daily living" to be used verbatim in policies and certificates that are not intended to qualify for favorable tax treatment under Public Law 104-191 shall be the following:

(1) Eating, which shall mean reaching for, picking up, and grasping a utensil and cup; getting food on a utensil, and bringing food, utensil, and cup to mouth; manipulating food on plate; and cleaning face and hands as necessary following meals.

(2) Bathing, which shall mean cleaning the body using a tub, shower, or sponge bath, including getting a basin of water, managing faucets, getting in and out of tub or shower, and reaching head and body parts for soaping, rinsing, and drying.

(3) Dressing, which shall mean putting on, taking off, fastening, and unfastening garments and undergarments and special devices such as back or leg braces, corsets, elastic stockings or garments, and artificial limbs or splints.

(4) Toileting, which shall mean getting on and off a toilet or commode and emptying a commode, managing clothing and wiping and cleaning the body after toileting, and using and emptying a bedpan and urinal.

(5) Transferring, which shall mean moving from one sitting or lying position to another sitting or lying position; for example, from bed to or from a wheelchair or sofa, coming to a standing position, or repositioning to promote circulation and prevent skin breakdown.

(6) Continence, which shall mean the ability to control bowel and bladder as well as use ostomy or catheter receptacles, and apply diapers and disposable barrier pads.

(7) Ambulating, which shall mean walking or moving around inside or outside the home regardless of the use of a cane, crutches, or braces.

SEC. 4. Section 10233.5 of the Insurance Code is amended to read:

10233.5. (a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of

initial solicitation through means which prominently direct the attention of the recipient to the document and its purpose.

(b) In the case of agent solicitations, an agent shall deliver the outline of coverage prior to the presentation of an application or enrollment form.

(c) In the case of direct response solicitations, the outline of coverage shall be presented in conjunction with any application or enrollment form.

(d) The outline of coverage shall be a freestanding document, using no smaller than 10-point type.

(e) The outline of coverage shall contain no material of an advertising nature.

(f) Use of the text and sequence of the text of the outline of coverage set forth in this section is mandatory, unless otherwise specifically indicated.

(g) Text which is capitalized or underscored in the outline of coverage may be emphasized by other means which provide prominence equivalent to capitalization or underscoring.

(h) The outline of coverage shall be in the following form:

"(COMPANY NAME)

(ADDRESS—CITY AND STATE)

(TELEPHONE NUMBER)

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

(Policy Number or Group Master Policy and Certificate Number)

1. This policy is (an individual policy of insurance) ((a group policy) which was issued in the (indicate jurisdiction in which group policy was issued)).

2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!

3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.

(a) Provide a brief description of the right to return—"free look" provision of the policy.

(b) Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains those provisions, include a description of them.

4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.

(a) (For agents) Neither (insert company name) nor its agents represent Medicare, the federal government or any state government.

(b) (For direct response) (insert company name) is not representing Medicare, the federal government or any state government.

5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community, or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy (limitations) (waiting periods) and (coinsurance) requirements. (Modify this paragraph if the policy is not an indemnity policy.)

6. BENEFITS PROVIDED BY THIS POLICY.

(a) (Covered services, related deductible(s), waiting periods, elimination periods, and benefit maximums.)

(b) (Institutional benefits, by skill level.)

(c) (Noninstitutional benefits, by skill level.)

(Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.)

7. LIMITATIONS AND EXCLUSIONS.

(Describe:

(a) Preexisting conditions.

(b) Noneligible facilities/provider.

(c) Noneligible levels of care (e.g., unlicensed providers, care or treatments provided by a family member, etc.).

(d) Exclusions/exceptions.

(e) Limitations.)

(This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.)

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. (As applicable, indicate the following:

(a) That the benefit level will NOT increase over time.

(b) Any automatic benefit adjustment provisions.

(c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage.

(d) If there is a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations.

(e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.)

9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.

(a) Describe the policy renewability provisions.

(b) For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy.

(c) Describe waiver of premium provisions or state that there are no waiver of premium provisions.

(d) State whether or not the company has a right to change premium, and if that right exists, describe clearly and concisely each circumstance under which the premium may change.

10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.

(State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's Disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision that provides preconditions to the availability of policy benefits for that insured.)

11. PREMIUM.

(a) State the total annual premium for the policy.

(b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.

12. ADDITIONAL FEATURES.

(a) Indicate if medical underwriting is used.

(b) Describe other important features.

13. INFORMATION AND COUNSELING. The California Department of Insurance has prepared a Consumer Guide to Long-Term Care Insurance. This guide can be obtained by calling the Department of Insurance toll-free telephone number. This number is 1-800-927-HELP. Additionally, the Health Insurance Counseling and Advocacy Program (HICAP) administered by the California Department of Aging, provides long-term care insurance counseling to California senior citizens. Call the HICAP toll-free telephone number 1-800-434-0222 for a referral to your local HICAP office."

SEC. 5. Section 10234.87 of the Insurance Code is amended to read:

10234.87. (a) If an insurer replaces a policy or certificate that it has previously issued, the insurer shall recognize past insured status by granting premium credits toward the premiums for the replacement policy or certificate. The premium credits shall equal five percent of the annual premium of the prior policy or certificate for each full year the prior policy or certificate was in force. The premium credit shall be applied toward all future premium payments for the replacement policy or certificate, but the cumulative credit allowed need not exceed 50 percent. No credit need be provided if a claim has been filed under the original policy or certificate.

(b) The cumulative credits allowed need not reduce the premium for the replacement policy or certificate to less than the premium of the original policy or certificate.

(c) This section shall not apply to life insurance policies that accelerate benefits for long-term care.

CHAPTER 1068

An act to amend Sections 3008, 3202, 3204, 3205, 3205.5, 3206, and 3258 of the Public Resources Code, relating to oil and gas wells, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 3008 of the Public Resources Code is amended to read:

3008. (a) "Well" means any oil or gas well or well for the discovery of oil or gas; any well on lands producing or reasonably presumed to contain oil or gas; any well drilled for the purpose of injecting fluids or gas for stimulating oil or gas recovery, repressuring or pressure maintenance of oil or gas reservoirs, or disposing of waste

fluids from an oil or gas field; any well used to inject or withdraw gas from an underground storage facility; or any well drilled within or adjacent to an oil or gas pool for the purpose of obtaining water to be used in production stimulation or repressuring operations.

(b) "Prospect well" or "exploratory well" means any well drilled to extend a field or explore a new, potentially productive reservoir.

(c) "Active observation well" means a well being used for the sole purpose of gathering reservoir data, such as pressure or temperature in a reservoir being currently produced or injected by the operator, and the data is gathered at least once every three years.

(d) "Idle well" means any well that has not produced oil or natural gas or has not been used for injection for six consecutive months of continuous operation during the last five or more years. An idle well does not include an active observation well.

(e) "Long-term idle well" means any well that has not produced oil or natural gas or has not been used for injection for six consecutive months of continuous operation during the last 10 or more years. A long-term idle well does not include an active observation well.

SEC. 2. Section 3202 of the Public Resources Code is amended to read:

3202. Every person who acquires the right to operate a well, whether by purchase, transfer, assignment, conveyance, exchange, or other disposition, shall, as soon as it's reasonably possible, but not later than the date when the acquisition of the well becomes final, notify the supervisor or the district deputy, in writing, of the person's operation. The acquisition of a well shall not be recognized as complete by the supervisor or the district deputy until the new operator provides all of the following material:

(a) The name and address of the person from whom the well was acquired.

(b) The name and location of the well, and a description of the land upon which the well is situated.

(c) The date when the acquisition becomes final.

(d) The date when possession was or will be acquired.

(e) An indemnity bond for each idle well. The bond shall be in an amount as provided in Section 3204 or 3205. The conditions of the bond shall be the same as the conditions stated in Section 3204. An operator that has provided an individual bond required by this subdivision in an amount as provided in Section 3204 shall not be required additionally to comply with the requirements of Section 3206. An operator who has provided a blanket indemnity bond in the minimum amount required in subdivision (a) or (b) of Section 3205 shall additionally comply with Section 3206 for any idle wells not covered by a bond provided under Section 3204.

SEC. 3. Section 3204 of the Public Resources Code is amended to read:

3204. Any operator who, on or after January 1, 1999, engages in the drilling, redrilling, deepening, or in any operation permanently

altering the casing, of any well shall file with the supervisor an individual indemnity bond in the specified sum for each well so drilled, redrilled, deepened, or permanently altered. This sum shall be fifteen thousand dollars ($15,000) for each well less than 5,000 feet deep, twenty thousand dollars ($20,000) for each well at least 5,000 feet but less than 10,000 feet deep, and thirty thousand dollars ($30,000) for each well 10,000 or more feet deep. The bond shall be filed with the supervisor at the time of the filing of the notice of intention to perform work on the well, as provided in Section 3203. The bond shall be executed by the operator, as principal, and by an authorized surety company, as surety, conditioned that the principal named in the bond shall faithfully comply with all the provisions of this chapter, in drilling, redrilling, deepening, or permanently altering the casing in any well or wells covered by the bond, and shall secure the state against all losses, charges, and expenses incurred by it to obtain such compliance by the principal named in the bond.

The conditions of the bond shall be stated in substantially the following language: "If the _____, the above bounden principal, shall well and truly comply with all the provisions of Division 3 (commencing with Section 3000) of the Public Resources Code and shall obey all lawful orders of the State Oil and Gas Supervisor or the district deputy or deputies, subject to subsequent appeal as provided in that division, and shall pay all charges, costs, and expenses incurred by the supervisor or the district deputy or deputies in respect of the well or wells or the property or properties of the principal, or assessed against the well or wells or the property or properties of the principal, in pursuance of the provisions of that division, then this obligation shall be void; otherwise, it shall remain in full force and effect."

SEC. 4. Section 3205 of the Public Resources Code is amended to read:

3205. Any operator who engages in the drilling, redrilling, deepening, or in any operation permanently altering the casing, of one or more wells at any time, may file with the supervisor one blanket indemnity bond to cover all the operations in any of its wells in the state in lieu of an individual indemnity bond for each operation as required by Section 3204. The bond shall be executed by the operator, as principal, and by an authorized surety company, as surety, and shall be in substantially the same language and upon the same conditions as provided in Section 3204, except as to the difference in the amount. The bond shall be provided in one of the following amounts, as applicable:

(a) The sum of two hundred fifty thousand dollars ($250,000), which does not include the bond or fee required in Section 3206. A blanket surety bond provided prior to January 1, 1999, shall be increased to comply with this subdivision on or before January 1, 2001. A blanket cash bond provided prior to January 1, 1999, shall be increased by a minimum of thirty thousand dollars ($30,000) per year, initially payable January 1, 2000, and yearly on January 1,

thereafter, until the amount on deposit is sufficient to comply with this subdivision.

(b) The sum of one hundred thousand dollars ($100,000), which does not include the bond or fee required in Section 3206, for any operator having 50 or fewer wells in the state, exclusive of properly abandoned wells.

(c) The sum of one million dollars ($1,000,000), which does include the bond or fee required in Section 3206.

SEC. 5. Section 3205.5 of the Public Resources Code is amended to read:

3205.5. In lieu of the indemnity bond required by Sections 3204, 3205, 3205.1, 3205.2, and 3206, a deposit may, with the written approval of the supervisor, be given pursuant to Article 7 (commencing with Section 995.710) of Chapter 2 of Title 14 of Part 2 of the Code of Civil Procedure, other than a deposit of money or bearer bonds or bearer notes.

SEC. 6. Section 3206 of the Public Resources Code is amended to read:

3206. (a) The operator of any idle well not covered by an indemnity bond provided under Section 3204 or subdivision (c) of Section 3205 shall do one of the following:

(1) File with the supervisor an annual fee for each idle well equal to the sum of the following amounts:

(A) One hundred dollars ($100) for each idle well that has been idle for less than 10 years.

(B) Two hundred fifty dollars ($250) for each idle well that has been idle for 10 years or longer, but less than 15 years.

(C) Five hundred dollars ($500) for each idle well that has been idle for 15 years or longer.

(2) Provide an escrow account in a federally insured bank that does business in, and has an office in, the State of California, by depositing the amount of five thousand dollars ($5,000) for each idle well, in the following manner:

(A) The escrow account shall be accessible only to the supervisor and the money shall be retained in the escrow account exclusively for use by the supervisor for plugging and abandoning the operator's idle wells that become deserted pursuant to Section 3237.

(B) The money in the escrow account may be released only by the supervisor and only in amounts covering any idle well that has properly been plugged and abandoned, returned to production or injection or converted to an active observation well, if that money remaining in the escrow account is sufficient to fully fund the required deposits for all of the operator's remaining idle wells.

(C) The required deposit for each idle well shall be funded completely within 10 years of the date the well becomes idle, or 10 years from January 1, 1999, for any well that is idle as of January 1, 1999.

(D) The operator shall fund the escrow account at the rate of at least five hundred dollars ($500) per well per year.

(E) Failure of an operator in any year to provide the minimum funding for any idle well shall result in the institution of the annual fees required by paragraph (1) for that idle well, and all money already on deposit for that idle well shall be treated as previously paid annual fees and shall be deposited into the Hazardous and Idle-Deserted Well Abatement Fund specified in subdivision (b) for expenditure pursuant to that subdivision.

(3) File with the supervisor an indemnity bond that provides the sum of five thousand dollars ($5,000) for each idle well. The bond shall be subject to the conditions provided in Section 3204.

(4) On or before July 1, 1999, file a plan with the supervisor to provide for the management and elimination of all long-term idle wells not covered under paragraph (1), (2), or (3).

(A) For the purposes of the plan required by this paragraph, elimination of an idle well shall be accomplished when the well meets the requirements of Section 3208.

(B) A plan filed pursuant to this paragraph shall meet all of the following requirements and conditions:

(i) The plan shall cover a time period of no more than 10 years and may be renewed annually thereafter, subject to approval by the supervisor.

(ii) The plan shall be reviewed for performance annually by the supervisor, and be subject to amendment with the approval of the supervisor.

(iii) The required rate of long-term idle well elimination shall be based upon the number of idle wells under the control of an operator on January 1 of each year, as specified in clause IV. The supervisor may require additional well testing requirements as part of the plan.

(iv) The plan shall require that operators with 10 or fewer idle wells eliminate at least one long-term idle well every two years; operators with 11 to 20, inclusive, idle wells eliminate at least one long-term idle well each year; operators with 21 to 50, inclusive, idle wells eliminate at least two long-term idle wells each year; operators with 51 to 100, inclusive, idle wells eliminate at least five long-term idle wells each year; operators with 101 to 250, inclusive, idle wells eliminate at least 10 long-term wells each year; and operators with more than 250 idle wells eliminate at least 4 percent of their long-term idle wells each year.

(v) An operator who complies with the plan is exempt from any increased idle well bonding or fee requirements.

(vi) An operator who fails to comply with the plan, as determined by the supervisor after the annual performance review, is not eligible to use the requirements of this paragraph, for purposes of compliance with this section, for any of its idle wells. That operator shall immediately provide one of the alternatives in paragraph (1), (2), or (3) for its idle wells and may not propose a new idle well plan for the

next five years. An operator may appeal to the director pursuant to Article 6 (commencing with Section 3350) regarding the supervisor's rejection of a plan and plan amendments and the supervisor's determinations of the operator's failure to comply with a plan.

(b) All fees received under this section shall be deposited in the Hazardous and Idle-Deserted Well Abatement Fund, which is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the moneys in the Hazardous and Idle-Deserted Well Abatement Fund are hereby continuously appropriated to the department for expenditure without regard to fiscal year, to mitigate a hazardous or potentially hazardous condition by well plugging and abandonment.

(c) Failure to file, for any well, the bond or fee required under this section shall be conclusive evidence of desertion of the well, permitting the supervisor to order the well abandoned.

(d) Nothing in this section shall be construed to prohibit a local agency from collecting a fee for regulation of wells.

SEC. 7. Section 3258 of the Public Resources Code is amended to read:

3258. (a) The division shall not make expenditures pursuant to this article that exceed the following sum in any one fiscal year:

(1) One million dollars ($1,000,000) commencing on July 1, 1999, for the 1999–2000 fiscal year, and continuing for five fiscal years thereafter.

(2) Five hundred thousand dollars ($500,000), commencing with the 2005–06 fiscal year.

(b) Notwithstanding Section 7550.5 of the Government Code, on October 1, 2000, the department shall report to the Legislature on the number of orphan wells successfully abandoned in the 1999–2000 fiscal year, the number of orphan wells remaining, and the estimated costs of abandoning those orphan wells. The department shall also include in this report a timeline for future orphan well abandonment with a specific schedule of goals. Notwithstanding Section 7550.5 of the Government Code, on October 1, 2004, the department shall report to the Legislature on its progress toward meeting these goals of orphan well abandonment.

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 1069

An act to amend Section 16500.5 of, and to add Section 16500.51 to, the Welfare and Institutions Code, relating to child welfare services.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 16500.5 of the Welfare and Institutions Code is amended to read:

16500.5. (a) (1) The Legislature hereby declares its intent to encourage the continuity of the family unit by:

(A) (i) Providing family preservation services.

(ii) For purposes of this subdivision, "family preservation services" means intensive services for families whose children, without these services, would be subject to any of the following:

(I) Be at imminent risk of out-of-home placement.

(II) Remain in existing out-of-home placement for longer periods of time.

(III) Be placed in a more restrictive out-of-home placement.

(B) Providing supportive services for those children within the meaning of Sections 360, 361, and 364 when they are returned to the family unit or when a minor will probably soon be within the jurisdiction of the juvenile court pursuant to Section 301.

(C) Providing counseling and family support services designed to eradicate the situation that necessitated intervention.

(2) The Legislature finds that maintaining abused and neglected children in foster care grows increasingly costly each year, and that adequate funding for family services which might enable these children to remain in their homes is not as readily available as funding for foster care placement.

(3) The Legislature further finds that other state bodies have addressed this problem through various systems of flexible reimbursement in child welfare programs that provide for more intensive and appropriate services to prevent foster care placement or significantly reduce the length of stay in foster care.

(4) Accordingly, it is the intent of the Legislature in enacting this section to establish a system of flexible reimbursement in order to evaluate its potential as an efficient, economical, and effective alternative to out-of-home placement of children.

(b) It is the intent of the Legislature that family preservation and support services in California conform to the federal definitions

contained in Section 431 of the Social Security Act as contained in Public Law 103-66, the Omnibus Budget Reconciliation Act of 1993. The Legislature finds and declares that California's existing family preservation programs meet the intent of this new federal initiative.

(c) (1) (A) (i) Any county, subject to the approval of the State Department of Social Services, may claim, on an annual basis, a portion of the state's share, and to the extent permitted, the federal share, of that county's AFDC-FC expenditures pursuant to subdivision (d) of Section 11450 for children subject to Sections 300, 301, 360, 361, and 364, in advance, provided the county conducts a program of family reunification and family maintenance services for families receiving these services pursuant to Sections 300, 301, 360, 364, and, as permitted by the department, children subject to Sections 601, 602, 726, and 727 of this code, and Section 7572.5 of the Government Code.

(ii) The department or a participating county may terminate a county's participation in the program upon 30 days' notice if the project is deemed unsuccessful by either party.

(iii) For each fiscal year of the program, a participating county may claim in advance an amount not to exceed an actual dollar amount that shall not exceed 25 percent of the state's share, and to the extent permitted, the federal share, of AFDC-FC funds to be expended by that county pursuant to subdivision (d) of Section 11450 for children subject to Sections 300, 301, 360, 361, and 364, and if permitted by the department, Sections 601, 602, 726, and 727, calculated for the first year of the project.

(iv) The amount of funds to be advanced annually shall be calculated at the beginning of the county's program described in this subdivision. The advance shall be determined by projecting the state share of AFDC-FC General Fund expenditures, and to the extent permitted, the federal share of AFDC-FC expenditures for abused or neglected children pursuant to Sections 300, 301, 360, 361, 364, and, if permitted by the department, Sections 601, 602, 726, and 727, based upon state, and to the extent permitted, federal expenditures for AFDC-FC for the previous five years.

(B) Except as provided in subparagraph (C), if the county's total AFDC-FC General Fund expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures, added to the amount expended from the advance to the county exceeds, by more than 5 percent, the county's total projected AFDC-FC General Fund expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures for that fiscal year, the county shall fund that portion of the overage in excess of 5 percent on a 100-percent basis. If the sum of a participating county's total AFDC-FC General Fund expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures for their children, added to the amount expended from the advance to the county, is less than the total projected AFDC-FC General Fund

expenditures and, to the extent permitted by federal law, the federal share of AFDC-FC expenditures for their children for that fiscal year, the county shall receive 25 percent of the amount of the savings.

(C) (i) A participating county's share of expenditures in excess of the projected total may be reduced upon approval of the department. In determining this reduction, the department shall consider the increase in foster care placements of children in the homes of relatives as provided in Sections 361.3 and 16501.1, and in Section 505 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193; 42 U.S.C.A. Sec. 671(a)), which result in higher than projected AFDC-FC expenditures for children described in subparagraph (A). In considering the increase in relative foster care placements, the department shall adjust the total to consider only those children whose families have no history of receiving family preservation services.

(ii) This subparagraph shall become inoperative on the date that the director executes a declaration, which shall be retained by the director, specifying that the department has established a kinship care program that is separate and distinct from the existing foster care program and that provides services uniquely suited to the needs of children being cared for by their kin, or on January 1, 2002, whichever is earlier.

(2) Services which may be provided under this program may include, but are not limited to, counseling, mental health treatment and substance abuse treatment services, parenting, respite, day treatment, transportation, homemaking, and family support services. Each county that chooses to provide mental health treatment and substance abuse treatment shall identify and develop these services in consultation with county mental health treatment and substance abuse treatment agencies. Additional services may include those enumerated in Sections 16506 and 16507. The services to be provided pursuant to this section may be determined by each participating county. Each county may contract with individuals and organizations for services to be provided pursuant to this section. Each county shall utilize available private nonprofit resources in the county prior to developing new county-operated resources when these private nonprofit resources are of at least equal quality and costs as county-operated resources and shall utilize available county resources of at least equal quality and cost prior to new private nonprofit resources.

(3) Participating counties authorized by this subdivision shall provide specific programs of direct services based on individual family needs as reflected in the service plans to families of the following:

(A) Children who are dependent children not taken from physical custody of their parents or guardians pursuant to Section 364.

(B) Children who are dependent children removed from the physical custody of their parents or guardian pursuant to Section 361.

(C) Children who it is determined will probably soon be within the jurisdiction of the juvenile court pursuant to Section 301.

(D) Upon approval of the department, children who have been adjudged wards of the court pursuant to Sections 601 and 602.

(E) Upon approval of the department, families of children subject to Sections 726 and 727.

(F) Upon approval of the department, children who are determined to require out-of-home placement pursuant to Section 7572.5 of the Government Code.

(4) The services shall only be provided to families whose children will be placed in out-of-home care without the provision of services or to children who can be returned to their families with the provision of services.

(5) The services selected by any participating county shall be reasonable and meritorious and shall demonstrate cost-effectiveness and success at avoiding out-of-home placement, or reducing the length of stay in out-of-home placement. A county shall not expend more funds for services under this subdivision than that amount which would be expended for placement in out-of-home care.

(6) The program in each county shall be deemed successful if it meets the following standards:

(A) Enables families to resolve their own problems, effectively utilize service systems, and advocate for their children in educational and social agencies.

(B) Enhancing family functioning by building on family strengths.

(C) At least 75 percent of the children receiving services remain in their own home for six months after termination of services.

(D) During the first year after services are terminated:

(i) At least 60 percent of the children receiving services remain at home one year after services are terminated.

(ii) The average length of stay in out-of-home care of children selected to receive services who have already been removed from their home and placed in out-of-home care is 50 percent less than the average length of stay in out-of-home care of children who do not receive program services.

(E) Two years after the termination of family preservation services:

(i) The average length of out-of-home stay of children selected to receive services under this section who, at the time of selection, are in out-of-home care, is 50 percent less than the average length of stay in out-of-home care for children in out-of-home care who do not receive services pursuant to this section.

(ii) At least 60 percent of the children who were returned home pursuant to this section remain at home.

(7) Funds used for services provided under this section shall supplement, not supplant, child welfare services funds available for services pursuant to Sections 16506 and 16507.

(8) Each county participating in the program authorized by this section shall only continue to utilize the advance fund-claiming mechanism specified in paragraph (1) if the department finds the county has demonstrated the successful outcome of the county program, based on the criteria for success specified in paragraph (6).

(9) The department shall submit a report to the Legislature that includes data from each participating county demonstrating to what extent each has met the criteria specified in this section. An interim report shall be submitted by the department no later than six months after the conclusion of the three pilot projects with a final report to be submitted after pilot project completion. Programs authorized after the original pilot projects shall submit data to the department upon the department's request. Subsequent reports to the Legislature on the programs administered pursuant to this section shall be included with the child welfare system report to the Legislature.

(d) (1) A county welfare department social worker or probation officer may, pursuant to an appropriate court order, return a dependent minor or ward of the court removed from the home pursuant to Section 361 to his or her home, with appropriate interagency family preservation program services.

(2) The county probation department may, with the approval of the State Department of Social Services, through an interagency agreement with the county welfare department, refer cases to the county welfare department for the direct provision of services under this subdivision.

(e) State foster care funds shall remain within the administrative authority of the county welfare department and shall be used only for placement services or placement prevention services or county welfare department administrative cost related to the interagency family preservation program.

(f) To the extent permitted by federal law, any federal funds provided for services to families and children may be utilized for the purposes of this section.

(g) A county may establish family preservation programs that serve one or more geographic areas of the county, subject to the approval of the State Department of Social Services.

SEC. 2. Section 16500.51 is added to the Welfare and Institutions Code, to read:

16500.51. (a) Any county that elects to continue to conduct a family preservation program pursuant to subdivision (c) of Section 16500.5 may request a permanent transfer of funds from the category of General Fund moneys appropriated for out-of-home placement provided pursuant to subdivision (d) of Section 11450 for children subject to Section 300, 301, 360, 361, or 364, and, as permitted by the department, children subject to Sections 601, 602, 726, 727, and 7572.5 of the Government Code, for that county, to the category of child welfare services as specified in subdivision (j) of Section 16501 for the

purposes of providing family preservation services, if the county's implementation of the family preservation program has been based upon a plan, approved by the department, that includes phased-in implementation. The amount identified for transfer shall be the amount calculated as provided in Section 16500.5.

(b) Subject to the approval of the department, a county may receive upon its request, at any time after the permanent transfer of funds specified in subdivision (a) has been made, a supplemental permanent transfer of funds to serve additional populations of eligible children who were not served during the initial phase of plan implementation. The maximum amount that may be transferred pursuant to this subdivision shall be subject to the limits specified in subdivision (c) of Section 16500.5.

CHAPTER 1070

An act to amend Sections 4848 and 4905 of, and to add Section 4848.3 to, the Business and Professions Code, relating to veterinary medicine, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 4848 of the Business and Professions Code is amended to read:

4848. (a) (1) The board shall, by means of examination, ascertain the professional qualifications of all applicants for licenses to practice veterinary medicine in this state and shall issue a license to every person whom it finds to be qualified. No license shall be issued to anyone who has not demonstrated his or her competency by examination.

(2) The examination shall consist of each of the following:

(A) A licensing examination that is administered on a national basis.

(B) A California state board examination.

(C) An examination concerning those statutes and regulations of the Veterinary Medicine Practice Act administered by the board. The examination shall be administered by mail and provided to applicants within 10 to 20 days of eligibility determination. The board shall have 10 to 20 days from the date of receipt to process the examination and provide candidates with the results of the examination. The applicant shall certify that he or she personally completed the examination. Any false statement is a violation subject to Section 4831. University of California veterinary medical students who have successfully completed a course on veterinary law and

ethics covering the California Veterinary Medicine Practice Act shall be exempt from this provision.

(3) The examinations may be given at the same time or at different times as determined by the board. For examination purposes, the board may make contractual arrangements on a sole source basis with organizations furnishing examination material as it may deem desirable and shall be exempt from Section 10115 of the Public Contract Code.

(4) The licensing examination may be waived by the board in any case in which it determines that the applicant has taken and passed an examination for licensure in another state substantially equivalent in scope and subject matter to the licensing examination last given in California before the determination is made, and has achieved a score on the out-of-state examination at least equal to the score required to pass the licensing examination administered in California.

(5) Nothing in this chapter shall preclude the board from permitting a person who has completed a portion of his or her educational program, as determined by the board, in a veterinary college, recognized by the board under Section 4846, to take any examination or any part thereof prior to satisfying the requirements for application for a license established by Section 4846.

(b) Until July 1, 2002, the board shall waive the examination requirements of subdivision (a), and issue a temporary license valid for one year to an applicant to practice veterinary medicine under the supervision of another licensed California veterinarian in good standing, if the applicant meets all of the following requirements and would not be denied issuance of a license by any other provision of this code:

(1) The applicant holds a current valid license in good standing in another state, Canadian province, or United States territory and has practiced clinical veterinary medicine for a minimum of four years full time within the five years immediately preceding filing an application for licensure in this state. Experience obtained while participating in an American Veterinary Medical Association (AVMA) accredited institution's internship, residency, or specialty board training program shall be valid for meeting the minimum experience requirement.

The term "in good standing" means that an applicant under this section:

(A) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of veterinary medicine by any public agency, nor entered into any consent agreement or subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting

from the practice of veterinary medicine that the board determines constitutes evidence of a pattern of incompetence or negligence.

(B) Has no physical or mental impairment related to drugs, alcohol, or has not been found mentally incompetent by a physician so that the applicant is unable to undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public.

(2) At the time of original licensure, the applicant passed the national licensing requirement in veterinary science with a passing score or scores on the examination or examinations equal to or greater than the passing score required to pass the national licensing examination or examinations administered in this state.

(3) The applicant has either graduated from a veterinary college recognized by the board under Section 4846 or possesses a certificate issued by the Educational Commission for Foreign Veterinary Graduates (ECFVG).

(4) The applicant passes an examination concerning the statutes and regulations of the Veterinary Medicine Practice Act, administered by the board, pursuant to subparagraph (C) of paragraph (2) of subdivision (a).

(5) The applicant agrees to complete an approved educational curriculum on regionally specific and important diseases and conditions during the period of temporary licensure. The board, in consultation with the California Veterinary Medical Association (CVMA), shall approve educational curricula that cover appropriate regionally specific and important diseases and conditions that are common in California. The curricula shall focus on small and large animal diseases consistent with the current proportion of small and large animal veterinarians practicing in the state. The approved curriculum shall not exceed 30 hours of educational time. The board shall approve a curriculum as soon as practical, but not later than June 1, 1999. The approved curriculum may be offered by multiple providers so that it is widely accessible to candidates licensed under this subdivision.

(c) Upon receipt of acknowledgment of successful completion of the requirements set forth in subdivision (b), the board shall issue a license to the applicant. Any applicant who does not meet the requirements of subdivision (b) shall take a California state board examination as specified in subparagraph (B) of paragraph (2) of subdivision (a).

SEC. 2. Section 4848.3 is added to the Business and Professions Code, to read:

4848.3. (a) The board shall issue a temporary license valid for one year to an applicant accepted into a qualifying internship or residency program that meets all of the following requirements:

(1) Program participants have either graduated from a veterinary college recognized by the board under Section 4846 or possess a certificate issued by the Educational Commission for Foreign

Veterinary Graduates, and hold a current valid license in good standing in another state, Canadian province, or United States territory.

(2) Program participants are under the direct supervision of a board-certified California-licensed veterinarian in good standing.

(3) Two or more board-certified specialists are on the staff of the veterinary practice.

(4) The program undergoes annual evaluation and is approved by one or more existing organizations officially recognized for that purpose by the board. The board shall designate one or more organizations for this purpose no later than January 31, 1999, and the evaluation and approval process shall begin no later than March 1, 1999.

(b) The temporary license issued pursuant to this section shall only be valid for activities performed in the course of, and incidental to, a qualifying internship or residency program.

SEC. 3. Section 4905 of the Business and Professions Code is amended to read:

4905. The following fees shall be collected by the board and shall be credited to the Veterinary Medical Board Contingent Fund:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred dollars ($100).

(b) The fee for the licensing examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed three hundred twenty-five dollars ($325).

(c) The fee for the California state board examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred fifty dollars ($150).

(d) The fee for the Veterinary Medicine Practice Act examination shall be set by the board in an amount it determines reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed fifty dollars ($50).

(e) The initial license fee shall be set by the board not to exceed two hundred fifty dollars ($250) except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the board at not to exceed one hundred twenty-five dollars ($125). The board may, by appropriate regulation, provide for the waiver or refund of the initial license fee where the license is issued less than 45 days before the date on which it will expire.

(f) The renewal fee shall be set by the board for each biennial renewal period in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed two hundred fifty dollars ($250).

(g) The temporary license fee shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purpose of this chapter, not to exceed one hundred twenty-five dollars ($125).

(h) The delinquency fee shall be set by the board, not to exceed twenty-five dollars ($25).

(i) The fee for issuance of a duplicate license is ten dollars ($10).

(j) The board may make a charge for records, transcripts, and other official documents pertaining to the affairs of the board.

(k) The fee for failure to report a change in the mailing address is fifteen dollars ($15).

(*l*) The initial and annual renewal fees for registration of veterinary premises shall be set by the board in an amount not to exceed one hundred dollars ($100) annually.

(m) If the money transferred from the Veterinary Medical Board Contingent Fund to the General Fund pursuant to the Budget Act of 1991 is redeposited into the Veterinary Medical Board Contingent Fund, the fees assessed by the board shall be reduced correspondingly. However, the reduction shall not be so great as to cause the Veterinary Medical Board Contingent Fund to have a reserve of less than three months of annual authorized board expenditures. The fees set by the board shall not result in a Veterinary Medical Board Contingent Fund reserve of more than 10 months of annual authorized board expenditures.

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 1071

An act to add Section 1023.5 to the Military and Veterans Code, relating to veterans homes.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 1023.5 is added to the Military and Veterans Code, to read:

1023.5. (a) Notwithstanding Section 1023 or any other provision of law, a portion of the money received from the lease of real property for a golf course on the grounds of the Veterans Home of California, Yountville, commencing at the end of the first 12 months after the date the department no longer operates a driving range on that property, shall, upon appropriation by the Legislature, be made available annually to the administrator for special projects that provide a direct benefit to the members of the Veterans Home of California, Yountville, in an amount to be determined pursuant to subdivision (b).

(b) The amount to be transferred pursuant to subdivision (a) shall be an amount equal to the revenue received by the post fund from the department-operated driving range in the highest revenue-producing year of the last five consecutive calendar years of operation less the amount deposited in the post fund pursuant to the terms of the lease of property for a golf course, adjusted for inflation in each succeeding year following the first annual transfer made pursuant to subdivision (a).

CHAPTER 1072

An act to amend Section 8715 of the Family Code, and to add Section 366.29 to, and to amend Sections 16002 and 16501.1 of, the Welfare and Institutions Code, relating to adoption of dependent children.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 8715 of the Family Code is amended to read:

8715. (a) The department or licensed adoption agency, whichever is a party to or joins in the petition, shall submit a full report of the facts of the case to the court.

(b) If the child has been adjudged to be a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code, and has thereafter been freed for adoption by the juvenile court, the report required by this section shall describe whether the requirements of subdivision (e) of Section 16002 of the Welfare and Institutions Code have been completed and what, if any, plan exists for facilitation of postadoptive contact between the child who is the subject of the adoption petition and his or her siblings and half-siblings.

(c) Where a petition for adoption by a relative has been filed with a kinship adoption agreement pursuant to Section 8714.7, the report shall address whether the kinship adoption agreement is in the best interest of the child who is the subject of the petition. The department may also submit a report in those cases in which a licensed adoption agency is a party or joins in the adoption petition.

SEC. 2. Section 366.29 is added to the Welfare and Institutions Code, to read:

366.29. (a) When a court, pursuant to Section 366.26, orders that a dependent child be placed for adoption, nothing in the adoption laws of this state shall be construed to prevent the prospective adoptive parent or parents of the child from expressing a willingness to facilitate postadoptive sibling contact. With the consent of the adoptive parent or parents, the court may include in the final adoption order provisions for the adoptive parent or parents to facilitate postadoptive sibling contact. In no event shall the continuing validity of the adoption be contingent upon the postadoptive contact, nor shall the ability of the adoptive parent or parents and the child to change residence within or outside the state be impaired by the order for contact.

(b) If, following entry of an order for sibling contact pursuant to subdivision (a), it is determined by the adoptive parent or parents that sibling contact poses a threat to the health, safety, or well-being

of the adopted child, the adoptive parent or parents may terminate the sibling contact, provided that the adoptive parent or parents shall submit written notification to the court within 10 days after terminating the contact, which notification shall specify to the court the reasons why the health, safety, or well-being of the adopted child would be threatened by continued sibling contact.

SEC. 3. Section 16002 of the Welfare and Institutions Code is amended to read:

16002. (a) It is the intent of the Legislature to maintain the continuity of the family unit, and ensure the preservation and strengthening of the child's family ties by ensuring that when siblings have been removed from their home, either as a group on one occurrence or individually on separate occurrences, the siblings will be placed in foster care together, unless it has been determined that placement together is not in the best interest of one or more siblings. The Legislature recognizes that in order to ensure the placement of a sibling group in the same foster care placement, placement resources need to be expanded.

(b) The responsible local agency shall make a diligent effort in all out-of-home placements of dependent children, including those with relatives, to maintain sibling togetherness and contact. When maintaining sibling togetherness is not possible, diligent effort shall be made, and a case plan prepared, to provide for ongoing and frequent interaction among siblings until family reunification is achieved, or, if parental rights are terminated, as part of developing the permanent plan for the child. If the court determines by a preponderance of the evidence that sibling interaction is detrimental to a child or children, the reasons for the determination shall be noted in the court order, and interaction shall be suspended.

(c) When there has been a judicial suspension of sibling interaction, the reasons for the suspension shall be reviewed at each periodic review hearing pursuant to Section 366. When the court determines that sibling interaction can be safely resumed, that determination shall be noted in the court order and the case plan shall be revised to provide for sibling interaction.

(d) If the case plan for the child has provisions for sibling interaction, the child, or his or her parent or legal guardian shall have the right to comment on those provisions.

(e) If parental rights are terminated and the court orders a dependent child to be placed for adoption, the licensed county adoption agency or the State Department of Social Services shall take all of the following steps to facilitate ongoing sibling contact, except in those cases provided in subdivision (b) where the court determines by a preponderance of the evidence that sibling interaction is detrimental to the child:

(1) Include in training provided to prospective adoptive parents information about the importance of sibling relationships to the

adopted child and counseling on methods for maintaining sibling relationships.

(2) Provide prospective adoptive parents with information about siblings or half-siblings of the child, except the address where the siblings or half-siblings of the children reside. However, this address may be disclosed by court order for good cause shown.

(3) Encourage prospective adoptive parents to make a plan for facilitating postadoptive contact between the child who is the subject of a petition for adoption and any siblings or half-siblings of this child.

(f) For the purpose of placement and visitation "sibling" is defined as sister, brother, half-sister, half-brother, or as appropriate, stepsister or stepbrother.

(g) The court documentation on sibling placements required under this section shall not require the modification of existing court order forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

SEC. 4. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(b) The Legislature further finds and declares that a case plan ensures that the child receives protection and proper case management, and that services are provided to the parents or other caretakers as appropriate. A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(c) When out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of the least restrictive or most familylike and most appropriate setting and selection of the environment best suited to meet the child's special needs and best interest, 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 366.26, 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 that 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 that 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 the home or institution at least every 12 months and submit a report to the court on each visit.

(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 interest of the child.

(8) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, 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, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker'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 January 1, 1999.

SEC. 4.3. 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 safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. 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. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(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 a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interest, 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 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(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 that 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 that 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 the home or institution at least every 12 months and submit a report to the court on each visit.

(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 interest of the child.

(8) When out-of-home services are used, or when parental rights have been terminated and the case plan is placement for adoption, 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) When out-of-home services are used, the child's case plan is subject to review at the first 12-month permanency hearing, and if the case plan is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (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.

(12) 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.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(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, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker'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 January 1, 1999.

SEC. 4.5. 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 interest, 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 366.26, 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 that 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 that 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 interest 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, or when parental rights have been terminated and the case plan is placement for adoption, 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, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker'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. 4.7. 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 safe and proper care and case management, and that services are provided to the child and parents or other caretakers as appropriate in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care. 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. In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns. Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided. If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(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 a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, consistent with the selection of the environment best suited to meet the child's special needs and best interest, 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 366.26, but no less

frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(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 that 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 that 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 interest 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, or when parental rights have been terminated and the case plan is placement for adoption, 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) When out-of-home services are used, the child's case plan is subject to review at the first 12-month permanency hearing, and if the case plan is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (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.

(12) 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.

(13) When the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and

willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(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, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. Nothing in this section shall be construed to require or prohibit the social worker'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. 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.

SEC. 6. (a) Section 4.3 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and AB 2773. 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 16501.1 of the Welfare and Institutions Code, (3) SB 933 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2773, in which case Sections 4, 4.5, and 4.7 of this bill shall not become operative.

(b) Section 4.5 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by both this bill and SB 933. 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 16501.1 of the Welfare and Institutions Code, (3) AB 2773 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after SB 933, in which case Section 16501.1 of the Welfare and Institutions Code, as amended by SB 933, shall remain operative only until the operative date of this bill, at which time Section 4.5 of this bill shall become operative, and Sections 4, 4.3, and 4.7 of this bill shall not become operative.

(c) Section 4.7 of this bill incorporates amendments to Section 16501.1 of the Welfare and Institutions Code proposed by this bill, AB 2773, and SB 933. 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 16501.1 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2773 and SB 933, in which case Section 16501.1 of the Welfare and Institutions Code, as amended by SB 933, shall remain operative only until the operative date of this bill, at which time Section 4.7 of this bill shall become operative, and Sections 4, 4.3, and 4.5 of this bill shall not become operative.

CHAPTER 1073

An act to amend Sections 2142, 14405, 15500, 15501, 15505, and 15642 of, to amend the heading of Division 15 (commencing with Section 15000) of, to amend and renumber Sections 14421 and 14423 of, to amend and renumber the headings of Chapter 8 (commencing with Section 15400), Chapter 9 (commencing with Section 15450), Chapter 10 (commencing with Section 15500), Chapter 11 (commencing with Section 15550), Chapter 12 (commencing with Section 15600), and Chapter 13 (commencing with Section 15650) of Division 15 of, to add Sections 335.5, 336.5, and 353.5 to, to add Article 3 (commencing with Section 14430) and Article 4 (commencing with Section 14440) to Chapter 4 of Division 14 of, to add Chapter 2 (commencing with Section 15100) and Chapter 4 (commencing with Section 15300) to Division 15 of, to repeal Sections 13245, 14406, 14420, 14422, 15552, and 17500 of, to repeal Article 6 (commencing with Section 14320) of Chapter 3 of Division 14 of, to repeal Article 5 (commencing with Section 15645) of Chapter 12 of Division 15 of, to repeal Chapter 2 (commencing with Section 15050), Chapter 4 (commencing with Section 15200), Chapter 5 (commencing with Section 15250), Chapter 6 (commencing with Section 15300), and Chapter 7 (commencing with Section 15350) of Division 15 of, to repeal and add Sections 301, 14403, and 14404 of, and to repeal and add Chapter 1 (commencing with Section 15000) and Chapter 3 (commencing with Section 15150) of Division 15 of, the Elections Code, relating to elections.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 301 of the Elections Code is repealed.

SEC. 2. Section 301 is added to the Elections Code, to read:

301. A "ballot" means any of the following:

(a) A single card with prescored, number positions that is marked by the voter with a punching device and the accompanying reference page or pages containing the names of candidates and the ballot titles of measures to be voted on with numbered positions corresponding to the numbers on the card.

(b) One or more cards upon which are printed the names of the candidates and the ballot titles of measures to be voted on by punching or marking in the designated area.

(c) One or more sheets of paper upon which are printed the names of candidates and the ballot titles of measures to be voted on by marking the designated area and that are tabulated manually or by optical scanning equipment.

(d) A large sheet of paper upon which is printed the names of candidates and ballot titles of measures to be voted on by pressing the designated area on a direct-recording electronic device.

(e) An electronic touchscreen upon which appears the names of candidates and ballot titles of measures to be voted on by touching the designated area on the screen of a direct-recording electronic device.

SEC. 3. Section 335.5 is added to the Elections Code, to read:

335.5. The "official canvass" is the public process of processing and tallying all ballots received in an election, including, but not limited to, provisional ballots and absentee ballots not included in the semifinal official canvass. The official canvass also includes the process of reconciling ballots, attempting to prohibit duplicate voting by absentee and provisional voters, and performance of the manual tally of 1 percent of all precincts.

SEC. 4. Section 336.5 is added to the Elections Code, to read:

336.5. "One percent manual tally" is the public process of manually tallying votes in 1 percent of the precincts, selected at random by the elections official, and in one precinct for each race not included in the randomly selected precincts. This procedure is conducted during the official canvass to verify the accuracy of the automated count.

SEC. 5. Section 353.5 is added to the Elections Code, to read:

353.5. The "semifinal official canvass" is the public process of collecting, processing, and tallying ballots and, for state or statewide elections, reporting results to the Secretary of State on election night. The semifinal official canvass may include some or all of the absentee and provisional vote totals.

SEC. 6. Section 2142 of the Elections Code is amended to read:

2142. (a) If the county elections official refuses to register any qualified elector in the county, the elector may proceed by action in the superior court to compel his or her registration. In an action under this section, as many persons may join as plaintiffs as have causes of action.

(b) If the county elections official has not registered any qualified elector who claims to have registered to vote through the Department of Motor Vehicles or any other public agency designated as a voter registration agency pursuant to the National Voter Registration Act of 1993 (42 U.S.C. Sec. 1973gg), the elector may proceed by action in the superior court to compel his or her registration. In an action under this section, as many persons may join as plaintiffs as have causes of action.

SEC. 7. Section 13245 of the Elections Code is repealed.

SEC. 8. Article 6 (commencing with Section 14320) of Chapter 3 of Division 14 of the Elections Code is repealed.

SEC. 9. Section 14403 of the Elections Code is repealed.

SEC. 10. Section 14403 is added to the Elections Code, to read:

14403. Immediately upon the closing of the polls and before any voted ballot is taken from any of the ballot containers, the precinct board member shall, in the presence of all persons in the room who may desire to observe them, proceed to render the unused ballots unusable in one of the following ways:

(a) By drawing across its face, in ink or indelible pencil, two lines that cross each other, the cross to be more than three inches square. The precinct board member shall thereupon, immediately and before any ballots are taken from any ballot container, place all defaced ballots within an envelope or other receptacle provided for that purpose.

(b) By tearing or cutting in a manner so that it is apparent that the ballot has been intentionally destroyed to prevent its use. If this method of destruction is used, it shall be done in a manner so that the serial number of the ballots is retained for the purposes of reconciliation.

(c) By placing all of the unused ballots into a special container provided for that purpose. A tamperproof seal containing spaces for entering the total number of unused ballots enclosed, the beginning and ending serial numbers thereof, and signature lines for all members of the precinct board following a statement certifying that all of the ballots were placed in the container in their presence and the information on the seal is true and correct, shall be provided. After signing the seal, it shall be placed on the container in a manner so that the container cannot be opened without tearing the seal.

SEC. 11. Section 14404 of the Elections Code is repealed.

SEC. 12. Section 14404 is added to the Elections Code, to read:

14404. Immediately upon the arrival of the hour when the polls are required by law to be closed on election day, the elections official

conducting the election shall openly, in the elections official's main office, in the presence of any persons who are present to observe, according to the procedure set forth in Section 14403, proceed to render every unused ballot remaining in the control of the elections official unusable. The elections official shall forthwith make and file an affidavit, in writing, as to the number of ballots destroyed. If the procedure in subdivision (c) of Section 14403 is used, the tamperproof seal shall be signed by the elections official and at least one deputy or assistant elections official or registrar. The sealed container shall then be placed, with the sealed containers containing unused ballots from the precincts, in a security area by the elections official until disposition is made pursuant to Section 17301 or 17302.

Alternatively, the elections official may, immediately upon the arrival of the hour when the polls are closed, recycle for any other lawful purpose any unused ballots remaining in the control of the elections official that clearly identify the election for which they were prepared. No later than 30 days following the last day to certify the official results of the election, the elections official shall make and file an affidavit, in writing, as to the number of ballots recycled. At the elections official's discretion, the unused ballots may be recycled up to six months following an election or at the conclusion of an election contest proceeding, whichever is later.

SEC. 13. Section 14405 of the Elections Code is amended to read:

14405. (a) The members of the precinct board shall account for the ballots delivered to them by returning a sufficient number of unused ballots to make up, when added to the number of official ballots cast and the number of spoiled and canceled ballots returned, the number of ballots given to them. The officers receiving returned ballots shall compel this accounting.

(b) The precinct board shall complete the roster as required in Section 14107, and shall also complete and sign the certificate of performance prescribed in Section 15280, if that section applies.

SEC. 14. Section 14406 of the Elections Code is repealed.

SEC. 15. Section 14420 of the Elections Code is repealed.

SEC. 16. Section 14421 of the Elections Code is amended and renumbered to read:

14420. (a) As soon as the polls are closed, the precinct board shall remove the voted ballots from the ballot container and take them out of the secrecy envelopes or detach them from the secrecy stubs. Where the envelope or stub is also the write-in ballot, and a write-in vote has been registered thereon, the ballot card shall not be separated from the envelope or stub. If two or more separate ballot cards have been used in the election, the precinct board shall sort them into groups, each of which shall contain the same series of ballot cards.

(b) After completing the action described in subdivision (a), the precinct board shall count the number of ballot cards in each group, and certify the number of ballots cast on the voting roster as provided

by Section 14105. If there is any discrepancy between the number of voters listed in the roster and the number of ballots voted, this fact shall be noted with an explanation of the difference and signed by all the members of the precinct board.

SEC. 17. Section 14422 of the Elections Code is repealed.

SEC. 18. Section 14423 of the Elections Code is amended and renumbered to read:

14421. The precinct board shall group voted ballot cards and voted separate write-in ballots, as directed by the elections official, and place them in containers. The board shall also place spoiled and void ballots, if any, in containers as directed by the elections official. All of these ballots, along with the containers for voted ballot cards, shall be placed in one or more boxes, which shall then be sealed and delivered as soon as possible to the receiving centers or central counting places with the unused ballots, supplies, and other materials as directed by the elections official.

SEC. 19. Article 3 (commencing with Section 14430) is added to Chapter 4 of Division 14 of the Elections Code, to read:

Article 3. Return of Supplies to the Clerk

14430. The precinct board, as soon after the polls are closed as possible, shall prepare the supplies, including the copies of the index posted at or near the polling place, and records of the election for delivery to the elections official.

14431. The precinct board shall enclose and seal in one or more packages, as determined by the elections official, all voted, spoiled, canceled, or unused ballots.

14432. The precinct board shall enclose and seal in one or two packages, as determined by the elections official, all of the following:

(a) Two tally sheets, if ballots are to be tabulated manually at the precinct.

(b) The roster of voters.

(c) The copy of the index used as the voting record.

(d) The challenge list.

(e) The assisted voter's list.

14433. If ballots are counted at precincts pursuant to Article 3 (commencing with Section 15340) or Article 5 (commencing with Section 15360) of Chapter 4 of Division 15, the precinct board immediately shall transmit, unsealed, to the elections official a statement showing the result of the votes cast at the polling place. The statement shall be open to public inspection.

14434. The sealed packages containing the lists, papers, and ballots shall be delivered by two of its members without delay, unopened, to the elections official or to a receiving station designated by the elections official.

14435. No list, tally, paper, or certificate returned from any election shall be set aside or rejected for want of form, nor because

it is not strictly in accordance with this code, if it can be satisfactorily understood.

SEC. 20. Article 4 (commencing with Section 14440) is added to Chapter 4 of Division 14 of the Elections Code, to read:

Article 4. Snap Tallies

14440. Before any election, the governing body of the jurisdiction holding the election shall decide that certain offices or measures to be voted on are of more than ordinary public interest and require an early tabulation and announcement. The decision shall be transmitted to the elections official not less than 30 days before the election.

14441. The elections official shall prepare and forward to each selected precinct forms containing a list of the offices and measures designated as being of more than ordinary interest, and stating the number of ballots to be counted for the snap tally. In each general election, the special form shall, for each office listed on it, include the names of all candidates for that office whose names appear on the ballot.

The inspector at each selected precinct shall note the results of the count and the total number of votes cast in the precinct on the snap tally forms as soon as the designated number of ballots has been tallied. The inspector shall then communicate the figures in the manner directed by the elections official. In each general election, the figures shall include the votes cast for every candidate whose name appears on the ballot for an office listed on the forms. The inspector shall continue, each time the designated number of ballots have been tallied, to note and report the results as directed.

14442. Upon receipt from the precincts of the reports of votes cast on the specially designated offices and measures, the elections official shall tabulate the results and make the results available to the public. In each general election, all these reports of the election results shall include the votes cast for all candidates whose names appear on the ballot for each office for which returns are reported.

14443. If ballots are counted by means of electronic, electromechanical, or punchcard device, the elections official may provide for early tabulation and announcement of the returns in a manner consistent with the use of the tabulating devices.

SEC. 21. The heading of Division 15 (commencing with Section 15000) of the Elections Code is amended to read:

DIVISION 15. SEMIFINAL OFFICIAL CANVASS, OFFICIAL CANVASS, RECOUNT, AND TIE VOTE PROCEDURES

SEC. 22. Chapter 1 (commencing with Section 15000) of Division 15 of the Elections Code is repealed.

SEC. 23. Chapter 1 (commencing with Section 15000) is added to Division 15 of the Elections Code, to read:

CHAPTER 1. PREPARATION FOR CANVASS

15000. No later than seven days prior to any election conducted pursuant to this code, the elections official shall conduct a test or series of tests to ensure that every device used to tabulate ballots accurately records each vote. The exact methods employed in this test shall conform to the voting procedures for the specific voting systems, as adopted by the Secretary of State.

15001. (a) A copy of each election computer vote count program for a statewide election or state special election to fill vacancies shall be deposited with the Secretary of State. The copy of the election computer vote count program shall be received by the Secretary of State no later than 5 p.m. on the seventh day before the election.

(b) If the election computer vote count program is modified or altered after the submission specified in subdivision (a), the elections official immediately shall deposit the subsequent program no later than 12 p.m. on the day of the election.

(c) The Secretary of State shall hold the deposited programs for a period of not less than six months, at which time the program shall be returned to the elections official.

(1) The elections official shall preserve the returned program for a period of 16 months.

(2) The programs deposited in accordance with this section shall be used only for a recanvass of the vote, an official recount, court action, or for logic and accuracy tests required by the Secretary of State.

(3) Any tape, diskette, cartridge, or other magnetic or electronic storage medium containing the vote count program submitted pursuant to this section shall be maintained by the Secretary of State in a secure location when not in use for an official purpose specified in paragraph (2).

(d) The Secretary of State may, by mandamus or other appropriate proceeding, require and compel the county elections officials to submit the computer vote count program specified in subdivision (a). Venue for a proceeding under this section shall be exclusively in Sacramento County.

15002. No later than January 1 of each even-numbered year, the Secretary of State shall review, and if necessary amend, administrative procedures for use with each of the voting systems pursuant to Division 19.

15003. Elections officials shall adopt semifinal official and official canvass procedures to conform to the applicable voting system procedures that have been approved by the Secretary of State. These procedures shall be available for public inspection no later than 29 days before each election.

15004. The county central committee of each qualified political party may employ, and may have present at the central counting place or places, not more than two qualified data processing specialists or engineers to check and review the preparation and operation of the tabulating devices, their programming and testing, and have the specialists or engineers in attendance at any or all phases of the election.

SEC. 24. Chapter 2 (commencing with Section 15050) of Division 15 of the Elections Code is repealed.

SEC. 25. Chapter 2 (commencing with Section 15100) is added to Division 15 of the Elections Code, to read:

CHAPTER 2. ABSENTEE BALLOT PROCESSING

15100. The provisions of this chapter apply to the processing of absentee ballots during the 29-day period before any election, during the semifinal official canvass, and during the official canvass.

15101. (a) Any jurisdiction in which absentee ballots are cast may begin to process absentee ballot return envelopes beginning 29 days before the election. Processing absentee ballot return envelopes may include verifying the voter's signature on the absentee ballot return envelope and updating voter history records.

(b) Any jurisdiction having the necessary computer capability may start to process absentee ballots on the seventh day prior to the election. Processing absentee ballots includes opening absentee ballot return envelopes, removing ballots, duplicating any damaged ballots, and preparing the ballots to be machine read, or machine reading them, but under no circumstances may a vote count be accessed or released until 8 p.m. on the day of the election. All other jurisdictions shall start to process absentee ballots at 5 p.m. on the day before the election.

(c) Results of any absentee ballot tabulation or count shall not be released prior to the close of the polls on the day of the election.

15102. The official shall appoint a special counting board or boards in numbers that he or she deems adequate to count the absentee ballots. The official shall provide for the forms of tally books and the distribution of the duties of the members of the canvassing board.

When the tally is done by hand, there shall be no less than four persons for each office or proposition to be counted. One shall read from the ballot, the second shall keep watch for any error or improper vote, and the other two shall keep the tally.

15103. The elections official shall pay a reasonable compensation to each member of the canvassing board of absentee ballots. This compensation shall be paid out of the treasury of the agency conducting the election as other claims against it are paid.

15104. (a) The processing of absentee ballot return envelopes, and the processing and counting of absentee ballots shall be open to the public, both prior to and after the election.

(b) Any member of the county grand jury, and at least one member each of the Republican county central committee, the Democratic county central committee, and of any other party with a candidate on the ballot, and any other interested organization, shall be permitted to observe and challenge the manner in which the absentee ballots are handled, from the processing of absentee ballot return envelopes through the counting and disposition of the ballots.

(c) The elections official shall notify absentee voter observers and the public at least 48 hours in advance of the dates, times, and places where absentee ballots will be processed and counted.

(d) Absentee voter observers shall be allowed sufficiently close access to enable them to observe and challenge whether those individuals handling absentee ballots are following established procedures, including all of the following:

(1) Verifying signatures and addresses by comparing them to voter registration information.

(2) Duplicating accurately any damaged or defective ballots.

(3) Securing absentee ballots to prevent any tampering with them before they are counted on election day.

(e) No absentee voter observer shall interfere with the orderly processing of absentee ballot return envelopes or processing and counting of absentee ballots, including touching or handling of the ballots.

15105. Prior to processing and opening the identification envelopes of absent voters, the elections official shall make available a list of absent voters for public inspection, from which challenges may be presented. Challenges may be made for the same reasons as those made against a voter voting at a polling place. In addition, a challenge may be entered on the grounds that the ballot was not received within the time provided by this code or that a person is imprisoned for a conviction of a felony. All challenges shall be made prior to the opening of the identification envelope of the challenged absent voter.

15106. Except as otherwise provided, the processing of absentee ballot return envelopes, the processing and counting of absentee ballots, and the disposition of challenges of absentee ballots shall be according to the laws now in force pertaining to the election for which they are cast. Because the voter is not present, the challenger shall have the burden of establishing extraordinary proof of the validity of the challenge at the time the challenge is made.

15107. If a challenge is overruled, the board shall open the identification envelope without defacing the affidavit printed on it or mutilating the enclosed ballot and, without viewing the ballot, remove it and destroy the numbered slip, if any remains, and store the ballots in a secure location.

15108. If a challenge is allowed, the board shall endorse on the face of the identification envelope the cause of the challenge and its action thereon.

15109. Except as otherwise provided in this chapter, the counting and canvassing of absentee ballots shall be conducted in the same manner and under the same regulations as used for ballots cast in a precinct polling place.

15110. Reports to the Secretary of State of the findings of the canvass of absentee ballots shall be made by the elections official pursuant to Chapter 3 (commencing with Section 15150) and Chapter 4 (commencing with Section 15300).

15111. The elections official shall keep an accurate list of all voters who have received and voted an absentee ballot at each election and compare this list with the roster of voters as provided in Section 2207.

15112. When elections are consolidated pursuant to Division 10 (commencing with Section 10000), and only one form of ballot is used at the consolidated election, the ballots cast by absent voters shall be counted only in connection with elections to which absent voter privileges have been extended by law.

Whenever the period of time within which absent voters' ballots shall be received by the elections official in order to be counted, as provided for any election by this code or any other law of this state, is different from that period of time provided for another election, and the elections are consolidated and only one form of ballot used for both elections, all absent voters' ballots issued for the consolidated election may be counted for both elections if received by the elections official within whichever period of time that is the longer.

SEC. 26. Chapter 3 (commencing with Section 15150) of Division 15 of the Elections Code is repealed.

SEC. 27. Chapter 3 (commencing with Section 15150) is added to Division 15 of the Elections Code, to read:

CHAPTER 3. SEMIFINAL OFFICIAL CANVASS

Article 1. General Provisions

15150. For every election the elections official shall conduct a semifinal official canvass by tabulating absentee and precinct ballots and compiling the results. The semifinal official canvass shall commence immediately upon the close of the polls and shall continue without adjournment until all precincts are accounted for.

15151. (a) The elections official shall transmit the semifinal official results to the Secretary of State in the manner and according to the schedule prescribed by the Secretary of State prior to each election, for the following:

(1) All candidates voted for statewide office.

(2) All candidates voted for the following offices:

(A) State Assembly.

(B) State Senate.
(C) Member of the United States House of Representatives.
(D) Member of the State Board of Equalization.
(E) Justice of the Court of Appeals.
(3) All persons voted for at the presidential primary or for electors of President and Vice President of the United States.
(4) Statewide ballot measures.
(b) The elections official shall transmit the results to the Secretary of State at intervals no greater than two hours, following commencement of the semifinal official canvass.

15152. Neither the elections official, any member of a precinct board, nor any other person shall count any votes, either for a ballot proposition or candidate, until the close of the polls in that county. After that time, the ballots for all candidates and ballot propositions voted upon solely within the county shall be counted and the results of the balloting made public. However, the results for any candidate or ballot proposition also voted upon in another county or counties shall not be made public until after all the polls in that county and the other county or counties have closed. This paragraph applies regardless of whether the counting is done by manual tabulation or by a vote tabulating device.

15153. During the semifinal official canvass, write-in votes shall be counted in accordance with Article 3 (commencing with Section 15340) of Chapter 4.

15154. (a) Any ballot that is not marked as provided by law or that is marked or signed by the voter so that it can be identified by others shall be rejected. The rejected ballots shall be placed in the package marked for voted ballots or in a separate container as directed by the elections official. All rejected ballots shall have written thereon the cause for rejection and be signed by a majority of processing board members who are assigned by the elections official to process ballots.
(b) The following ballot conditions shall not render a ballot invalid:
(1) Soiled or defaced.
(2) Two or more impressions of the voting stamp or mark in one voting square.
(c) If a voter indicates, either by a combination of both marking and writing in, a choice of more names than there are candidates to be elected or nominated for any office, or if for any reason the choice of the voter is impossible to determine, the vote for that office shall not be counted, but the remainder of the ballot, if properly marked, shall be counted.
(d) This section applies to all ballots counted pursuant to this chapter and Chapter 4 (commencing with Section 15300).

Article 2. Automated Count in a Central Location

15200. If paper ballots are used in conjunction with this system, counting shall be as provided in Article 5 (commencing with Section 15270) and Article 6 (commencing with Section 15290).

15201. (a) As soon as the polls are closed, the precinct board shall, in the presence of the public do all of the following:

(1) Seal the container used to transport voted ballots and insure that the precinct number is designated on the ballot container.

(2) Certify, sign, and seal the several packages or envelopes as directed by the elections official.

(3) By not less than two of their number, deliver the ballot container and packages to the elections official at the central counting place in the manner prescribed by the elections official. The ballot container and packages shall remain in their exclusive possession until delivered to the elections official.

(b) This section also applies to ballots counted manually pursuant to Article 6 (commencing with Section 15290).

15202. If the ballots are to be counted at a central counting place, no fewer than two precinct board members shall, following the close of the polls, deliver the ballots, in a sealed container, to the central counting place or a designated receiving station. There may be two or more central counting places.

15203. The vote tabulating device may be located at any place within the state approved by the elections official of the county or other political subdivision using the device. The same device may be jointly owned, borrowed, leased, or used by two or more counties, cities, or other political subdivisions to tabulate ballots cast in any election.

15204. All proceedings at the central counting place, or counting places, if applicable, shall be open to the view of the public but no person, except one employed and designated for the purpose by the elections official or his or her authorized deputy, shall touch any ballot container. Access to the area where electronic data processing equipment is being operated may be restricted to those persons authorized by the elections official.

15205. (a) A person may be employed to count, tally, and certify the ballots if he or she is not a candidate at the election and if he or she satisfies either of the following requirements:

(1) Has the qualifications required for a precinct board member.

(2) Is a deputy or employee of either of the following:

(A) The governing board.

(B) The elections official.

(b) No person selected to count ballots need reside in any particular precinct.

15206. The elections official or any deputy authorized by the elections official may excuse or dismiss any person from any counting board and enforce the order.

15207. The elections official or authorized deputy shall segregate the persons employed to count the ballots into counting boards. These counting boards shall be deemed to be precinct boards, and are subject to all laws governing precinct boards where ballots are counted at the polling place.

15208. Each container of ballots shall be opened and its contents removed. The ballots shall be checked to ascertain if the ballots are properly grouped and shall be arranged, if necessary, so that all similar ballots from the precinct are together.

Any ballot that is torn, bent, or mutilated shall be segregated in the manner directed by the elections official and a duplicate shall be prepared as provided in Section 15210. Any ballot that is marked in a manner so as to identify the voter shall be marked "Void" and shall be placed in the container for void ballots.

15209. Any magnetic or electronic storage medium used for the ballot tabulation program and any magnetic or electronic storage medium containing election results shall be kept in a secure location and shall be retained for six months following any local election and 22 months following any federal election or so long thereafter as any contest involving the vote at the local or federal election remains undetermined.

15210. In preparing the voted ballots for processing, any ballot that is torn, bent, or otherwise defective shall be corrected so that every vote cast by the voter shall be counted by the automatic tabulating equipment. If necessary, a true duplicate copy of the defective ballot shall be made and substituted therefor, following the intention of the voter insofar as it can be ascertained from the defective ballot. All duplicate ballots shall be clearly labeled "duplicate," and shall bear a serial number that shall be recorded on the damaged or defective ballot.

15211. If paper ballots are used for absentee voting, the canvass may be conducted in accordance with Chapter 1 (commencing with Section 15000), or the elections official may have a true duplicate copy of absentee voter paper ballots made on punchcard ballots that shall be verified in the presence of witnesses. After verification the punchcard ballots shall be counted in the same manner as other punchcard ballots.

15212. If voting at all precincts within a county is not conducted using the same voting system, the result as to the precincts not subject to this article shall be determined in accordance with other provisions of this code and the result of the vote at precincts subject to this article shall be determined as provided in this article. The statement of the vote in that case shall represent the consolidation of all the results and the results of the canvass of all absent voter ballots.

15213. In case of an emergency in which it becomes impossible to transport the ballots from the precinct to a central counting place, the elections official may direct that the ballots be counted at the

precinct. In those cases, counting shall be conducted substantially in accordance with Article 5 (commencing with Section 15270).

Article 3. Automated Vote Count in Precincts

15250. The ballots may be counted at the polls if a counting or tabulating machine approved therefor pursuant to Article 1 (commencing with Section 19200) of Chapter 3 of Division 19 is available at the polls.

15251. Upon receipt of the result of votes cast from the precinct boards, the elections official shall compile and make available to the public the results so received as to the offices and measures.

Article 4. Establishing Election Return Centers and Multiple Counting Centers

15260. (a) The elections official of the jurisdiction shall establish one or more election return centers for the purpose of facilitating the compilation of election returns and expediting their announcement to the public.

(b) In establishing a return center, the elections official may designate a group of precincts which the center shall serve and this designation shall be available for public inspection no later than 15 days before the election. The election return center may be at any public place as the elections official designates.

15261. The elections official may establish one or more multiple centers to count ballots from designated precincts and transmit the results via telephone, facsimile transmission, or modem. The count shall be conducted in all other respects in accordance with the central counting provisions of Article 2 (commencing with Section 15200). The list of designated precincts for each multiple counting center shall be available for public inspection no later than 15 days before the election.

Article 5. Manual Vote Count in the Precinct

15270. This article applies to all elections in which ballots are counted by hand.

15271. As soon as the polls are finally closed, the precinct board shall commence to count the votes by taking the ballots cast, unopened, out of the box and counting them to ascertain whether the number of ballots corresponds with the number of signatures on the roster. The precinct board shall make a record upon the roster of the number of ballots in the ballot box, the number of signatures on the roster, and the difference, if any.

15272. The count shall be public and shall be continued without adjournment until completed and the result is declared. During the

reading and tallying, the ballot read and the tally sheet kept shall be within the clear view of watchers.

15273. Unless otherwise provided in this code, the precinct board members may not constitute themselves into separate squads in an attempt to conduct more than one count of the ballots at the same time.

15274. The members of the precinct board may relieve each other in the duties of counting ballots.

15275. Those ballots not rejected shall be placed in one pile, and the board shall proceed to count by tallying the vote for one or more offices or measures at a time.

15276. The precinct board members shall ascertain the number of votes cast for each person and for and against each measure in the following manner:

One precinct board member shall read from the ballots. As the ballots are read, at least one other precinct board member shall keep watch of each vote so as to check on any possible error or omission on the part of the officer reading or calling the ballot.

15277. (a) Two of the precinct board members shall each keep a tally sheet in a form prescribed by the elections official. Each tally sheet shall contain all of the following:

(1) The name of each candidate being voted for and the specific office for which each candidate is being voted. The offices shall be in the same order as on the ballot.

(2) A list of each measure being voted upon.

(3) Sufficient space to permit the tallying of the full vote cast for each candidate and for and against each measure.

(b) The precinct board members keeping the tally sheets shall record opposite each name or measure, with pen or indelible pencil, the number of votes by tallies as the name of each candidate or measure voted upon is read aloud from the respective ballot.

(c) Immediately upon the completion of the tallies, the precinct board members keeping the tally shall draw two heavy lines in ink or indelible pencil from the last tally mark to the end of the line in which the tallies terminate and initial that line. The total number of votes counted for each candidate and for and against each measure shall be recorded on the tally sheets in words and figures.

15278. No precinct board member may make any tally of votes in any other manner than is provided in this article, nor in any place other than on the tally sheets provided for that purpose.

15279. The ballots, as soon as all of the names and measures marked on them as voted for are read and tallied, shall not thereafter be examined by any person, but, as soon as all are counted, shall be carefully sealed in a strong envelope. The signatures of each member of the precinct board shall be written across the seal.

15280. The precinct board shall complete, sign, and return to the elections official all furnished forms requiring its signatures.

When votes are counted at the precinct, all members of the precinct board, upon the completion of their duties, shall sign the following certificate of performance, which shall be substantially in the following form:

Certificate of Performance

for _____ precinct, for the _____ election, held on the _____ day of _____, (year).

We hereby certify that the total number of votes received by each candidate for each office and the total number of votes cast for and against each measure is as indicated on the tally sheets.

We further certify that the results of votes cast forms posted outside the polling place and transmitted to the county elections official show the total number of votes received by each candidate for each office and the total number of votes cast for and against each measure is as indicated.

_____	_____
Inspector	Clerk
_____	_____
Assistant Inspector	Clerk
_____	_____
Judge	Clerk
_____	_____
Judge	Clerk

15281. The precinct board shall sign and post conspicuously on the outside of the polling place a copy of the result of the votes cast. The copy shall remain posted for at least 48 hours after the official time fixed for the closing of the polls.

Article 6. Manual Vote Count in a Central Place

15290. Ballots that are to be counted manually in a central place shall be transported as provided in Sections 15201 and 15202. Each counting board shall proceed to count and tally the ballots by precincts, separately, under the direction of the elections official or authorized deputies, in the same manner as provided where ballots are counted at the polling place pursuant to Article 5 (commencing with Section 15270).

SEC. 28. Chapter 4 (commencing with Section 15200) of Division 15 of the Elections Code is repealed.

SEC. 29. Chapter 5 (commencing with Section 15250) of Division 15 of the Elections Code is repealed.

SEC. 30. Chapter 6 (commencing with Section 15300) of Division 15 of the Elections Code is repealed.

SEC. 31. Chapter 4 (commencing with Section 15300) is added to Division 15 of the Elections Code, to read:

CHAPTER 4. OFFICIAL CANVASS

Article 1. General Provisions

15300. This chapter applies to all elections.

15301. The canvass shall commence no later than the Thursday following the election, shall be open to the public, and, for state or statewide elections, shall result in a report of results to the Secretary of State. The canvass shall be continued daily, Saturdays, Sundays, and holidays excepted, for not less than six hours each day until completed.

15302. The official canvass shall include, but not be limited to, the following tasks:

(a) An inspection of all materials and supplies returned by poll workers.

(b) A reconciliation of the number of signatures on the roster with the number of ballots recorded on the ballot statement.

(c) In the event of a discrepancy in the reconciliation required by subdivision (b), the number of ballots received from each polling place shall be reconciled with the number of ballots cast, as indicated on the ballot statement.

(d) A reconciliation of the number of ballots counted, spoiled, canceled, or invalidated due to identifying marks, overvotes, or as otherwise provided by statute, with the number of votes recorded, including absentee and provisional ballots, by the vote counting system.

(e) Processing and counting any valid absentee and provisional ballots not included in the semifinal official canvass.

(f) Counting any valid write-in votes.

(g) Reproducing any damaged ballots, if necessary.

(h) Reporting final results to the governing board and the Secretary of State, as required.

15303. If the returns from any precinct are incomplete, ambiguous, not properly authenticated, or otherwise defective, the elections official may issue and serve subpoenas requiring members of the precinct board to appear and be examined under oath concerning the manner in which votes were counted and the result of the count in their precinct. This section shall apply when ballots are tabulated manually or automatically at the polls.

15304. In jurisdictions using a central counting place, the elections official may appoint not less than three deputies to open the

envelopes or containers with the materials returned from the precincts. If, after examination, any of the materials are incomplete, ambiguous, not properly authenticated, or otherwise defective, the precinct officers may be summoned before the elections official and examined under oath to describe polling place procedures and to correct the errors or omissions.

Article 2. Processing Absentee Ballots and Mail Ballot Precinct Ballots

15320. Absentee ballots and mail ballot precinct ballots returned to the elections office and to the polls on election day that are not included in the semifinal official canvass phase of the election shall be processed and counted during the official canvass in the manner prescribed by Chapter 3 (commencing with Section 15100).

Article 3. Processing Write-In Votes

15340. Each voter is entitled to write the name of any candidate for any public office, including that of President and Vice President of the United States, on the ballot of any election.

15341. Notwithstanding any other provision of law, no name written upon a ballot in any election shall be counted for an office or nomination unless the candidate whose name has been written on the ballot has complied with Part 3 (commencing with Section 8600) of Division 8.

15342. Any name written upon a ballot for a qualified write-in candidate, including a reasonable facsimile of the spelling of a name, shall be counted for the office, if it is written in the blank space provided and voted as specified below:

(a) For voting systems in which write-in spaces appear directly below the list of candidates for that office and provide a voting space, no write-in vote shall be counted unless the voting space next to the write-in space is marked or slotted as directed in the voting instructions.

(b) For voting systems in which write-in spaces appear separately from the list of candidates for that office and do not provide a voting space, the name of the write-in candidate, if otherwise qualified, shall be counted if it is written in the manner described in the voting instructions.

(c) The use of pressure-sensitive stickers, glued stamps, or any other device not provided for in the voting procedures for the voting systems approved by the Secretary of State to indicate the name of the write-in candidate are not valid, and a name indicated by these methods shall not be counted.

(d) Neither a vote cast for a candidate whose name appears on the ballot nor a vote cast for a write-in candidate shall be counted if the voter has indicated, by a combination of marking and writing, a

choice of more names than there are candidates to be nominated or elected to the office.

(e) All valid write-in votes shall be tabulated and certified to the elections official on forms provided for this purpose, and the write-in votes shall be added to the results of the count of the ballots at the counting place and be included in the official returns for the precinct.

Article 4. Processing and Counting Provisional Ballots

15350. Provisional ballots cast pursuant to Section 14310 shall be processed and counted in accordance with the provisions outlined in Chapter 3 (commencing with Section 15100) and pursuant to the requirements of Sections 14310 and 14311.

Article 5. One Percent Manual Tally

15360. During the official canvass of every election in which a voting system is used, the official conducting the election shall conduct a public manual tally of the ballots tabulated by those devices cast in 1 percent of the precincts chosen at random by the elections official. If 1 percent of the precincts should be less than one whole precinct, the tally shall be conducted in one precinct chosen at random by the elections official.

In addition to the 1 percent count, the elections official shall, for each race not included in the initial group of precincts, count one additional precinct. The manual tally shall apply only to the race not previously counted.

Additional precincts for the manual tally may be selected at the discretion of the elections official.

Article 6. Ballot Security and Reporting of Results

15370. After ballots are counted and sealed, the elections official may not open any ballots nor permit any ballots to be opened except as permitted in Sections 15303 and 15304, or in the event of a recount.

15371. Upon completion of the count, the elections official shall add to the results as so determined, the results of the write-in votes and any paper ballots used as certified by the precinct board, and thereupon shall declare the vote, and forthwith post one copy at the counting place for public inspection.

15372. The elections official shall prepare a certified statement of the results of the election and submit it to the governing body within 28 days of the election or, in the case of school district, community college district, county board of education, or special district elections conducted on the first Tuesday after the first Monday in November of odd-numbered years, no later than the last Monday before the last Friday of that month.

15373. When ballots are counted under this article, the result of the vote shall be shown by precinct.

15374. (a) The statement of the result shall show all of the following:

(1) The total number of ballots cast.

(2) The number of votes cast at each precinct for each candidate and for and against each measure.

(3) The total number of votes cast for each candidate and for and against each measure.

(b) The statement of the result shall also show the number of votes cast in each city, Assembly district, congressional district, senatorial district, State Board of Equalization district, and supervisorial district located in whole or in part in the county, for each candidate for the offices of presidential elector and all statewide offices, depending on the offices to be filled, and on each statewide ballot proposition.

15375. The elections official shall send to the Secretary of State within 35 days of the election in the manner requested one complete copy of all results as to all of the following:

(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) Member of the United States House of Representatives.

(4) Member of the State Board of Equalization.

(5) Justice of the Courts of Appeal.

(6) Judge of the Superior Court.

(7) Judge of the Municipal Court.

(c) All persons voted for at the presidential primary. The results for all persons voted for at the presidential primary for delegates to national conventions shall be canvassed and shall be sent within 20 days after the election.

(d) The vote given for persons for electors of President and Vice President of the United States. The results 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.

15376. The elections official shall deliver a duplicate of the certified statement of the result of votes cast to the chairperson of the county central committee of each party.

SEC. 32. Chapter 7 (commencing with Section 15350) of Division 15 of the Elections Code is repealed.

SEC. 33. The heading of Chapter 8 (commencing with Section 15400) of Division 15 of the Elections Code is amended and renumbered to read:

CHAPTER 5. ANNOUNCEMENT OF RESULTS

SEC. 34. The heading of Chapter 9 (commencing with Section 15450) of Division 15 of the Elections Code is amended and renumbered to read:

CHAPTER 6. DETERMINATION OF ELECTED OR NOMINATED CANDIDATES

SEC. 35. The heading of Chapter 10 (commencing with Section 15500) of Division 15 of the Elections Code is amended and renumbered to read:

CHAPTER 7. DUTIES OF THE SECRETARY OF STATE

SEC. 36. Section 15500 of the Elections Code is amended to read:

15500. The Secretary of State, commencing with the first results from the semifinal official canvass received from the elections officials, shall compile the results for the offices and measures listed in Section 15151, which compilation shall be continued without adjournment until completed. The Secretary of State shall immediately make public the results of the compilation as to those offices and measures.

SEC. 37. Section 15501 of the Elections Code is amended to read:

15501. (a) Except as to presidential electors, the Secretary of State shall compile the results for all of the following:

(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 prepare, certify, and file a statement of the vote from the compiled results 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. 38. Section 15505 of the Elections Code is amended to read:

15505. On the first Monday in the month following the election, or as soon as the results have been received from all the counties in the state, if received before that time, the Secretary of State shall analyze the votes given for presidential electors, and certify to the Governor the names of the proper number of persons having the highest number of votes. The Secretary of State shall thereupon issue

and transmit to each presidential elector a certificate of election. The certificate shall be accompanied by a notice of the time and place of the meeting of the presidential electors and a statement that each presidential elector will be entitled to a per diem allowance and mileage in the amounts specified.

SEC. 39. The heading of Chapter 11 (commencing with Section 15550) of Division 15 of the Elections Code is amended and renumbered to read:

CHAPTER 8. DISPOSITION OF BALLOTS AND SUPPLIES BY THE ELECTIONS OFFICIAL

SEC. 40. Section 15552 of the Elections Code is repealed.

SEC. 41. The heading of Chapter 12 (commencing with Section 15600) of Division 15 of the Elections Code is amended and renumbered to read:

CHAPTER 9. RECOUNT

SEC. 42. Section 15642 of the Elections Code is amended to read:

15642. Any tape, diskette, cartridge, or other magnetic or electronic storage medium used in the programming of vote totals shall be kept in a secure location and, if there is a recanvass of votes, the officer entrusted with the magnetic storage medium shall submit his or her affidavit stating that they are the true media used in the election and have not been altered.

SEC. 43. Article 5 (commencing with Section 15645) of Chapter 12 of Division 15 of the Elections Code is repealed.

SEC. 44. The heading of Chapter 13 (commencing with Section 15650) of Division 15 of the Elections Code is amended and renumbered to read:

CHAPTER 10. TIE VOTES

SEC. 45. Section 17500 of the Elections Code is repealed.

SEC. 46. 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 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; and because certain 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.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act otherwise 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 1074

An act to amend Sections 9350.56, 21752 and 21757 of, and to add Sections 7514.5 and 9356.16 to, the Government Code, relating to public employees and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 7514.5 is added to the Government Code, to read:

7514.5. Notwithstanding any other provision of law, whenever the rights of a member of the Public Employees' Retirement System, the State Teachers' Retirement System, or a retirement system established under the County Employees Retirement Law of 1937, because of membership in another retirement system, are conditional upon employment within a specified period of time after termination of service in another retirement system, that specified period shall be the period of service in full-time elective office on and after November 6, 1990, if the member was a full-time elective officer on or after that date and becomes a member of any of those retirement systems within 120 days after termination of the full-time elective office.

SEC. 2. Section 9350.56 of the Government Code is amended to read:

9350.56. "State service," within the meaning of Sections 9350.55, 9356.15, and 9356.16 means employment with the Legislature or either house thereof as an officer or employee.

SEC. 3. Section 9356.16 is added to the Government Code, to read:

9356.16. Any person who is a member of the system may also receive credit for state service prior to the date he or she became a member, whether the service was rendered before or after the operative date of this section, provided that he or she makes the contributions required by Section 9357.2, but at the rate of $6\frac{1}{2}$ percent. If he or she elects to make these contribution with respect to service credited under the Public Employees' Retirement System, his or her accumulated contributions, including accrued interest, under that system shall be transferred to his or her account under this system. Contributions transferred from the Public Employees' Retirement System shall reduce the contributions otherwise required by this section.

The contribution rate for a person who first commences service and who becomes a member of this system on or after January 1, 1982, shall be 8 percent.

SEC. 4. Section 21752 of the Government Code is amended to read:

21752. (a) (1) In accordance with Section 21756, a member's annual retirement benefits, adjusted to the actuarial equivalent of a straight-life annuity if payable in a form other than a straight-life annuity or a qualified joint and survivor annuity as provided under Section 21460, and determined without regard to any employee contributions or rollover contributions, as defined in Sections 402(a)(5), 403(a)(4), and 408(d)(3)) of Title 26 of the United States Code, otherwise payable to the member under Part 3 (commencing with Section 20000) and under any other defined benefit plan maintained by the employer that is subject to Section 415 of Title 26 of the United States Code, shall not exceed, in the aggregate, the dollar limit applicable pursuant to Section 415(b)(1)(A) of Title 26 of the United States Code; as appropriately modified by Section 415(b)(2)(F) and (G) of Title 26 of the United States Code.

(2) However, the annual retirement benefit payable to a member shall be deemed not to exceed the limitations prescribed in paragraph (1) if the benefit does not exceed ten thousand dollars ($10,000) and the member has at no time participated in a tax qualified defined contribution plan maintained by the employer.

(b) These limitations shall be applied pursuant to Section 415(b)(10) of Title 26 of the United States Code.

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

SEC. 5. Section 21757 of the Government Code is amended to read:

21757. (a) If the retirement benefits of any member or his or her survivors or beneficiaries would be limited by Section 415 of Title 26 of the United States Code, the board shall adjust the payment of benefits pursuant to Part 3 (commencing with Section 20000), including, but not limited to, cost-of-living adjustments, cost-of-living banks, temporary annuities, survivor continuance benefits or any

combinations thereof in order to maximize benefits within the limits of Section 415.

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

(c) The application of Section 415 to benefits provided under Part 3 and this part shall not be taken into account for purposes of determining employers' or employees' contribution rates, until replacement benefits are implemented pursuant to Section 21758.

(d) Under no circumstances shall the replacement benefit program result in increased benefit costs to an employer, member, or annuitant.

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

In order to ensure that members of the public retirement systems in California as well as their beneficiaries receive their benefits under those systems, it is necessary for this act to take effect immediately.

CHAPTER 1075

An act to amend Section 9873 of, and to add Section 9855.05 to, the Business and Professions Code, and to amend Section 12741 of the Insurance Code, relating to service contracts, and making an appropriation therefor.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 9855.05 is added to the Business and Professions Code, to read:

9855.05. On and after January 1, 2000, for the purposes of this chapter, "service contract" also includes a service contract as described in subdivision (e) of Section 12741 of the Insurance Code.

SEC. 2. Section 9873 of the Business and Professions Code, as amended by Section 55 of Chapter 401 of the Statutes of 1997, is amended to read:

9873. The fees prescribed by this chapter shall be set by the director by regulation, according to the following schedule:

(a) (1) The initial registration fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred sixty-five dollars ($165) for each place of business in this state. The initial registration fee for a service contractor is not more than seventy-five dollars ($75) for each place of business in this state.

(2) The initial registration fee for a person who engages in business as both an electronic repair industry service dealer and an appliance repair industry service dealer is not more than three hundred twenty-five dollars ($325) for each place of business in this state. The initial registration fee for a person who is a service contractor and engages in business as either an electronic repair industry service dealer or an appliance repair industry service dealer is not more than two hundred forty dollars ($240) for each place of business in this state.

(3) The initial registration fee for a person who engages in both the electronic repair industry and the appliance repair industry as a service dealer and is a service contractor is not more than four hundred dollars ($400) for each place of business in this state.

(4) On or after January 1, 2000, the initial registration fee for a service contractor described in subdivision (e) of Section 12741 of the Insurance Code shall be set by the director in an amount not to exceed the actual and direct costs associated with the regulation of those service contractors, but in no event more than fifty thousand dollars ($50,000).

A service dealer or service contractor who does not operate a place of business in this state, but engages in the electronic repair industry, the appliance repair industry, or sells, issues, or administers service contracts in this state shall pay the registration fee specified herein as if he or she had a place of business in this state.

(b) (1) The annual registration renewal fee for an electronic repair industry service dealer or for an appliance repair industry service dealer is not more than one hundred sixty-five dollars ($165) for each place of business in this state, if renewed prior to its expiration date. The annual registration renewal fee for a service contractor is seventy-five dollars ($75) for each place of business in this state, if renewed prior to its expiration date.

(2) The annual renewal fee for a service dealer who engages in the business as both an electronic repair industry service dealer and an

appliance repair industry service dealer is not more than three hundred dollars ($300) for each place of business in this state.

(3) The annual renewal fee for a service dealer who engages in the electronic repair industry and the appliance repair industry and is a service contractor is not more than three hundred seventy-five dollars ($375) for each place of business in this state.

(4) It is the intent of the Legislature that the amount of the annual registration renewal fee for a service contractor described in subdivision (e) of Section 12741 of the Insurance Code shall be evaluated and set by the Legislature.

A service dealer or service contractor who does not operate a place of business in this state, but who engages in the electronic repair industry, the appliance repair industry, or sells or issues service contracts in this state shall pay the registration fee specified herein as if he or she had a place of business in this state.

(c) The delinquency fee is an amount equal to 50 percent of the renewal fee for a license in effect on the date of renewal of the license, except as otherwise provided in Section 163.5.

This section shall remain in effect only until January 1, 2003, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2003, deletes or extends that date.

SEC. 3. Section 12741 of the Insurance Code, as amended by Section 2 of Chapter 523 of the Statutes of 1997, is amended to read:

12741. This part does not apply to:

(a) Performance guarantees or service contracts given by either the builder of a home or the manufacturer or seller of an appliance or other system or component, whether or not an identifiable charge is made for such guarantee or service contract.

(b) A service contract, guarantee, or warranty intending to guarantee or warrant the repairs or service of a home appliance, system or component, provided the service contract, guarantee or warranty is issued by a person who has sold, serviced, repaired or provided replacement of the appliance, system or component at the time of, or prior to issuance of the contract, guarantee or warranty; and, provided, further, that the person issuing the service contract, guarantee, or warranty, does not engage in the business of a home protection company.

(c) The provider of a pest control service agreement pursuant to Section 8516 of the Business and Professions Code.

(d) A repair or maintenance program for a home electrical system, or a component of such a wiring system where the program is offered or issued by a person or affiliate of a person whose business is regulated by the Public Utilities Commission, provided that the repair or maintenance program is related to a service provided by the regulated person or affiliate of the regulated person, and that the regulated person, or affiliate of the regulated person, or parent company of the regulated person acts as the guarantor of any repair or maintenance program created under this subdivision regardless of

whether the service is performed by the regulated person or an affiliate.

The company offering or issuing the program shall designate the company that will act as the guarantor of the program.

(e) On or after January 1, 2000, a service contract that is offered or issued by a person or affiliate of a person whose business is regulated by the Public Utilities Commission, provided that all of the following conditions are met:

(1) The regulated person, or affiliate of the regulated person, or parent company of the regulated person, acts as the guarantor of any service contract under this subdivision regardless of whether the service is performed by the regulated person or an affiliate.

(2) The service contract term is for one month or less.

(3) The person issuing or offering the service contract does not engage in the business of a home protection company.

The company offering or issuing the service contract shall designate the company that will act as the guarantor of the service contract.

(f) For purposes of subdivision (e), the person issuing or offering the service contract is subject to regulation by the Bureau of Electronic and Appliance Repair of the Department of Consumer Affairs.

(g) 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 Department of Consumer Affairs shall, in consultation with the Department of Insurance, representatives of the service contract and home warranty industries, and other interested parties, conduct an in-depth study of the evolving marketplace related to home service contracts and report its findings to the Legislature on or before May 1, 1999. The report shall include a recommendation regarding regulation of home service contracts and the appropriate form of regulation if regulation is determined to be necessary.

(b) For purposes of complying with the requirements of subdivision (a), the sum of fifty thousand dollars ($50,000) is hereby appropriated from the Electronic and Appliance Repair Fund to the Department of Consumer Affairs.

CHAPTER 1076

An act to amend Sections 22801, 22803, 22820, 23203, and 24201 of, and to add Sections 17193.5, 17199.5, 22147.5, 22260, and 22826 to, the Education Code, relating to the State Teachers' Retirement System.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 17193.5 is added to the Education Code, to read:

17193.5. (a) For purposes of this section, "public credit provider" means any financial institution or combination of financial institutions, which consists either solely, or has as a member or participant, a public retirement system. Notwithstanding any other provision of law, a public credit provider may, in connection with providing credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of a school district or county office of education, require the school district or county office of education to agree to the following conditions:

(1) If a participating school district or county office of education adopts a resolution by a majority vote of its board to participate under this section, it shall provide notice to the Controller of that election. The notice shall include a schedule for the repayment of principal and interest on the bonds, notes, certificates of participation, or other evidence of indebtedness and identify the public credit provider that provided credit enhancement. The notice shall be provided not later than the date of issuance of the bonds.

(2) If, for any reason a public credit provider is required to make principal or interest payments or both pursuant to a credit enhancement agreement, the public credit provider shall immediately notify the Controller of that fact and of the amount paid out by the public credit provider.

(3) Upon receipt of the notice required by paragraph (2), the Controller shall make an apportionment to the public credit provider in the amount of the payments made by the public credit provider for the purpose of reimbursing the public credit provider for its expenditures made pursuant to the credit enhancement agreement. The Controller shall make that apportionment only from moneys designated for apportionments to the school district pursuant to Section 42238 or to the county office of education pursuant to Section 2558 or to the community college district pursuant to Section 84750.

(b) The amount apportioned for a school district, a county office of education, or a community college district pursuant to this section shall be deemed to be an allocation to the district or the county office of education or the community college district for purposes of subdivision (b) or Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits or revenue levels pursuant to Section 42338 for any school district or pursuant to Section 2558 for any county office of education or pursuant to Section 84750 for any community college district, the revenue limit or revenue level for any fiscal year in which funds are apportioned for the district or for the county office of education pursuant to this section shall include any amounts apportioned by the Controller pursuant to paragraph (3) of subdivision (a).

SEC. 2. Section 17199.5 is added to the Education Code, to read:

17199.5. Notwithstanding Section 17199.4, if the bonds were subject to a credit enhancement agreement provided by a public credit provider pursuant to Section 17193.5 for which a payment for principal or interest, or both, has been made by the public credit provider, the Controller shall allocate to the public credit provider, rather than the trustee, the percentage of the apportionment to be made pursuant to this paragraph equal to the percentage of the outstanding indebtedness which is subject to the credit enhancement agreement.

SEC. 3. Section 22147.5 is added to the Education Code, to read:

22147.5. "Nonqualified service" means time during which creditable service subject to coverage by the plan is not performed, excluding time a member is eligible to purchase as permissive or additional service credit pursuant to Chapter 14 (commencing with Section 22800), Chapter 14.2 (commencing with Section 22820), and Chapter 14.5 (commencing with Section 22850).

SEC. 4. Section 22260 is added to the Education Code, to read:

22260. Notwithstanding any other provision of law, the system may provide credit enhancement for bonds, notes, certificates of participation, or other evidences of indebtedness of an employer, provided that any credit enhancement transaction satisfies the requirement of Section 22250 and does not constitute a prohibited transaction for purposes of Section 503 of the United States Internal Revenue Code.

SEC. 5. Section 22801 of the Education Code is amended to read:

22801. (a) A member who elects to receive additional service credit as provided in this chapter shall pay, prior to retirement, all contributions with respect to that service at the contribution rate for additional service credit, adopted by the board as a plan amendment, in effect at the time of election. Contributions shall be made in a lump sum, or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(b) If the member is employed to perform creditable service subject to coverage by the plan at the time of the election, the contributions shall be based upon the compensation earnable in the current school year or either of the two immediately preceding school years, whichever is highest.

(c) If the member is not employed to perform creditable service subject to coverage by the plan at the time of the election, the contributions shall be based upon the compensation earnable in the last school year of credited service or either of the two immediately preceding school years, whichever is highest.

(d) The employer may pay the amount required as employer contributions for additional service credited under paragraphs (2), (6), (7), (8), and (9) of subdivision (a) of Section 22803.

(e) The Public Employees' Retirement System shall transfer the actuarial present value of the assets of a person who makes an election pursuant to paragraph (10) of subdivision (a) of Section 22803.

(f) Regular interest shall be charged on all contributions from the end of the school year on which the contributions were based to the date of payment.

(g) Regular interest shall be charged on the monthly unpaid balance if the member pays in installments.

SEC. 6. Section 22803 of the Education Code is amended to read:

22803. (a) A member may elect to receive credit for any of the following:

(1) Service performed in a teaching position in a publicly supported and administered university or college in this state.

(2) Service performed in a certificated teaching position in a child care center operated by a county superintendent of schools or a school district in this state.

(3) Service performed in a teaching position in the California School for the Deaf or the California School for the Blind, or in special classes maintained by the public schools of this state for the instruction of the deaf, the hard of hearing, the blind, or the semisighted.

(4) Service performed in a certificated teaching position in a federally supported and administered Indian school in this state.

(5) Time served, not to exceed two years, in a certificated teaching position in a job corps center administered by the United States government in this state if the member was employed to perform creditable service subject to coverage by the plan within one year prior to entering the service and returned to employment to perform creditable service subject to coverage by the plan within six months following the date of termination of service in the job corps.

(6) Time spent on a sabbatical leave after July 1, 1956.

(7) Time spent on an approved leave to participate in any program under the federal Mutual Educational and Cultural Exchange Program.

(8) Time spent on an approved maternity or paternity leave of two years or less in duration, regardless of whether or not the leave was taken before or after the addition of this subdivision.

(9) Time spent on an approved leave, up to four months in any 12-month period, for family care or medical leave purposes, as defined by Section 12945.2 of the Government Code, as it read on the date leave was granted, excluding maternity and paternity leave.

(10) Time spent employed by the Board of Governors of the California Community Colleges in a position subject to coverage by the Public Employees' Retirement System between July 1, 1991, and December 31, 1997, provided the member has elected to return to coverage under the State Teachers' Retirement System pursuant to Section 20309 of the Government Code.

(b) In no event shall the member receive credit for service or time described in paragraphs (1) to (11), inclusive, of subdivision (a) if the member has received or is eligible to receive credit for the same service or time in the Cash Balance Plan under Part 14 (commencing with Section 26000) or another retirement system.

SEC. 7. Section 22820 of the Education Code is amended to read:

22820. (a) A member, other than a retired member, may elect to purchase out-of-state service credited in a public retirement system for service covering public education in another state or territory of the United States or by the United States for its citizens. In no event shall the member receive credit for this service if the member has credit or is eligible to receive credit for the same service in the Cash Balance Plan under Part 14 (commencing with Section 26000) or another public retirement system, excluding social security.

(b) The amount of out-of-state service for which a member may purchase credit may not exceed the number of years of service credited to the member in the out-of-state retirement system or 10 years, whichever is less.

(c) Out-of-state service credit may be purchased under this section by means of any of the following actions:

(1) Paying an amount equal to the amount refunded from the other public retirement system and receiving service credit in this plan pursuant to subdivision (a) of Section 22823.

(2) Paying the contributions required under this plan pursuant to subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(3) Paying an amount equal to the amount refunded from the other public retirement system and an additional amount in accordance with subdivision (a) of Section 22823 for the service credited in the other public retirement system.

(d) Contributions made to a plan qualified under Section 403(b) of the Internal Revenue Code may not be used to purchase credit for out-of-state service.

(e) Compensation for out-of-state service shall not be used in determining the highest average annual compensation earnable when calculating final compensation.

(f) The credited service purchase under this section shall not be used to meet the eligibility requirements for benefits provided under Sections 24001 and 24101.

SEC. 8. Section 22826 is added to the Education Code, to read:

22826. (a) A member may elect to receive up to five years of credit for nonqualified service provided the member is vested in the plan as provided in Section 22156.

(b) A member who elects to receive credit for nonqualified service as provided in this chapter shall contribute to the retirement fund the actuarial cost of the service, including interest as

appropriate, as determined by the board based on the most recent valuation of the plan.

(1) Payment that a member may make to the system to obtain credit for nonqualified service shall be paid in full prior to the effective date of a family, survivor, disability, or retirement allowance.

(2) If the system is unable to inform the member of the amount required to purchase nonqualified service prior to the effective date of the applicable allowance, the member may make payment in full within 30 working days after the date of mailing of the statement of contributions and interest required or the effective date of the appropriate allowance, whichever is later.

(c) Contributions for nonqualified service credit shall be made in a lump sum or in not more than 120 monthly installments. No installment, except the final installment, shall be less than twenty-five dollars ($25).

(d) Regular interest shall be charged on the monthly unpaid balance if the member makes installment payments.

SEC. 9. Section 23203 of the Education Code is amended to read:

23203. Redeposit of refunded accumulated retirement contributions shall be made in one sum, or in not more than 120 monthly installments, provided that no installment, except the final installment, shall be less than twenty-five dollars ($25).

SEC. 10. Section 24201 of the Education Code is amended to read:

24201. (a) A member may retire for service upon written application for retirement to the board, under paragraph (1) or (2) as follows:

(1) The member has attained age 55 years or more and has at least five years of credited service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions. The five years of credited service may include out-of-state service purchased pursuant to Section 22820.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if he or she has attained age 55 years and retires concurrently under the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, or the San Francisco City and County Employees' Retirement System.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 11. Section 24201 of the Education Code is amended to read:

24201. (a) A member may retire for service upon written application for retirement to the board, under paragraph (1) or (2) as follows:

(1) The member has attained age 55 years or more and has at least five years of credited service, at least one year of which has been performed subsequent to the most recent refund of accumulated

retirement contributions. The five years of credited service may include out-of-state service purchased pursuant to Section 22820.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if he or she has attained age 55 years and retires concurrently under the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under the County Employee Retirement Law of 1937, or the San Francisco City and County Employees' Retirement System.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 12. Section 11 of this bill incorporates amendments to Section 24201 of the Education Code proposed by both this bill and SB 610. 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 24201 of the Education Code, and (3) this bill is enacted after SB 610, in which case Section 10 of this bill shall not become operative.

CHAPTER 1077

An act to amend Sections 22134, 23201, and 24201 of the Education Code, and to add Section 31840.8 to the Government Code, relating to public employees.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 22134 of the Education Code is amended to read:

22134. (a) "Final compensation" means the highest average annual compensation earnable by a member during any period of three consecutive school years while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) For purposes of this section, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

(c) The determination of final compensation of a member who is also a member of the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code, or the San Francisco City and County Employees' Retirement System shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or of a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under this plan.

(3) Retirement under this plan is concurrent with the member's retirement under the other system.

(d) The compensation earnable for the first position in which California service is credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Section 23804.

(e) The board may specify a different final compensation with respect to allowances based on part-time service performed prior to July 1, 1956, for which credit was given under this plan under board rules in effect prior to that date.

(f) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service has to full-time service.

(g) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

SEC. 1.5. Section 22134 of the Education Code is amended to read:

22134. (a) "Final compensation" means the highest average annual compensation earnable by a member who retires, becomes disabled, or dies, before January 1, 1999, during any period of three consecutive school years while an active member of the Defined Benefit Program or time during which he or she was not a member but for which the member has received credit under the Defined Benefit Program, except time that was so credited for service performed outside this state prior to July 1, 1944. The last three consecutive years of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member.

(b) "Final compensation" means the highest average annual compensation earnable by a member who retires, becomes disabled,

or dies, on or after January 1, 1999, during any period of 12 consecutive months while an active member of the plan or time during which he or she was not a member but for which the member has received credit under the plan. The last 12 consecutive months of employment shall be used by the system in determining final compensation unless designated to the contrary in writing by the member. "Final compensation," for purposes of this subdivision, shall not include any amount resulting from a percentage increase in compensation earnable during the 12 consecutive months described in this subdivision that exceeds the increase generally applicable to members employed by the employer, in accordance with uniform criteria applicable to all of these members during that period. This exclusion shall not apply if the increase in compensation earnable results either from employment with a different employer or, as determined by the board, from a promotion to a position held by another employee within the 12-month period immediately preceding the promotion.

(c) For purposes of subdivision (a), periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for the breaks.

For purposes of subdivision (b), periods of service separated by breaks in service may be aggregated to constitute a period of 12 consecutive months, if the periods of service are consecutive except for the breaks.

(d) The determination of final compensation of a member who is also a member of the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code, or the San Francisco City and County Employees' Retirement System shall take into consideration the compensation earnable while a member of the other system, provided that all of the following exist:

(1) The member was in state service or in the employment of a local school district or of a county superintendent of schools.

(2) Service under the other system was not performed concurrently with service under this plan.

(3) Retirement under this plan is concurrent with the member's retirement under the other system.

(e) The compensation earnable for the first position in which California service is credited shall be used when additional compensation earnable is required to accumulate three consecutive years for the purpose of determining final compensation under Sections 23804, 23805, and 23855 for a member who applies for an allowance before January 1, 1999, and shall be used when additional compensation earnable is required to accumulate 12 consecutive months for the purpose of determining final compensation under

Sections 23804, 23805, and 23855 for a member who applies for an allowance on or after January 1, 1999.

(f) The board may specify a different final compensation with respect to allowances based on part-time service performed prior to July 1, 1956, for which credit was given under this plan under board rules in effect prior to that date.

(g) The board may specify a different final compensation with respect to disability allowances, disability retirement allowances, family allowances, and children's portions of survivor benefit allowances payable on and after January 1, 1978. The compensation earnable for periods of part-time service shall be adjusted by the ratio that part-time service has to full-time service.

(h) The amendment of former Section 22127 made by Chapter 782 of the Statutes of 1982 does not constitute a change in, but is declaratory of, the existing law.

SEC. 2. Section 23201 of the Education Code is amended to read:

23201. Any person whose accumulated retirement contributions were refunded and who has received, or will qualify to receive, a retirement allowance from the Public Employees' Retirement System, the University of California Retirement System, the Legislators' Retirement System, county retirement systems established under Chapter 3 (commencing with Section 31450) of Part 3 of Division 4 of Title 3 of the Government Code, or the San Francisco City and County Employees' Retirement System may elect to redeposit the accumulated retirement contributions that were refunded, with regular interest from the date of refund to the date of payment, without being employed to perform creditable service subject to coverage under the Defined Benefit Program. A person who elects to redeposit pursuant to this section shall not receive credit for service that might otherwise be creditable under Section 22810.

SEC. 3. Section 24201 of the Education Code is amended to read:

24201. (a) A member may retire for service under this part upon written application for retirement to the board, under paragraph (1) or (2) as follows:

(1) The member has attained age 55 years or more and has at least five years of credited California service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if he or she has attained age 55 years and retires concurrently under the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under the County Employee Retirement Law of 1937, or the San Francisco City and County Employees' Retirement System.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 3.5. Section 24201 of the Education Code is amended to read:

24201. (a) A member may retire for service under this part upon written application for retirement to the board, under paragraph (1) or (2) as follows:

(1) The member has attained age 55 years or more and has at least five years of credited service, at least one year of which has been performed subsequent to the most recent refund of accumulated retirement contributions. The five years of credited service may include out-of-state service purchased pursuant to Section 22820.

(2) The member is credited with service that is not used as a basis for benefits under any other public retirement system, excluding the federal social security system, if he or she has attained age 55 years and retires concurrently under the Public Employees' Retirement System, the Legislators' Retirement System, the University of California Retirement System, county retirement systems established under the County Employees Retirement Law of 1937, or the San Francisco City and County Employees' Retirement System.

(b) Application for retirement under paragraph (2) of subdivision (a) may be made at any time.

SEC. 4. Section 31840.8 is added to the Government Code, to read:

31840.8. The provisions of this chapter extending rights to a member of a county retirement system established under this chapter by reason of his or her membership in the Public Employees' Retirement System shall also apply to members of the State Teachers' Retirement System Defined Benefit Plan.

SEC. 5. Section 3.5 of this act shall only become operative if both this bill and SB 2126 of the 1997–98 Regular Session are enacted and amend Section 24201 of the Education Code, and this bill is chaptered last, in which case Section 3 of this act shall not become operative and shall be repealed on January 1, 1999. If SB 2126 of the 1997–98 Regular Session is not enacted or does not amend Section 24201 of the Education Code, then Section 3.5 shall not become operative and shall be repealed on January 1, 1999.

SEC. 6. Section 1.5 of this bill incorporates amendments to Section 22134 of the Education Code proposed by both this bill and AB 1102. 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 22134 of the Education Code, and (3) this bill is enacted after AB 1102, in which case Section 1 of this bill shall not become operative.

CHAPTER 1078

An act to amend Sections 2551.3, 17293, 49553, and 49559 of, to amend and renumber Section 8901 of, to add Article 7.1 (commencing with Section 54740) to Chapter 9 of Part 29 of, to repeal Sections 8900 and 8902 of, to repeal Article 17 (commencing with Section 8390) of Chapter 2 of, to repeal the heading of Chapter 6 (commencing with Section 8900) of, and to repeal Chapter 6.5 (commencing with Section 8910) of, Part 6 of, the Education Code, relating to education.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. Section 2551.3 of the Education Code is amended to read:

2551.3. (a) For the 1979–80 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall make the following computations to determine the state aid to be allocated for pregnant minors programs operated by county superintendents of schools:

(1) The Superintendent of Public Instruction shall determine expenditures made by the county office for the 1979–80 fiscal year and shall divide such amount by the average daily attendance in such program for the 1979–80 fiscal year.

(2) For the 1980–81 fiscal year, the quotient computed pursuant to paragraph (1) shall be increased by 9 percent, and shall be cumulatively increased in each fiscal year thereafter by the average inflation allowance applied to unified school district revenue limits, except that there shall be no inflation adjustment after the 1998–99 fiscal year.

(3) The amount computed pursuant to paragraph (2) shall be multiplied by the average daily attendance in pregnant minors programs for the then current fiscal year.

(b) The product computed pursuant to paragraph (3) of subdivision (a) shall be added to the sum computed pursuant to subdivision (a) of Section 2558.

(c) The funding provided by this section shall be for the purposes of subdivision (b) of Section 54749.5 and shall not be adjusted for inflation.

SEC. 2. Article 17 (commencing with Section 8390) of Chapter 2 of Part 6 of the Education Code is repealed.

SEC. 3. The heading of Chapter 6 (commencing with Section 8900) of Part 6 of the Education Code is repealed.

SEC. 4. Section 8900 of the Education Code is repealed.

SEC. 5. Section 8901 of the Education Code is amended and renumbered to read:

54749.5. (a) County superintendents who operated pregnant minors programs in the 1979–80 fiscal year, or commenced operation during the 1996–97 fiscal year, shall continue to operate pregnant minors programs in the 1980–81 fiscal year, or the 1997–98 fiscal year, as appropriate, and each fiscal year thereafter, and school districts that increased their revenue limit in the 1981–82 fiscal year pursuant to subdivision (d) of Section 42241 shall continue to operate pregnant minors programs in subsequent fiscal years, unless the program is transferred to another local education agency, or unless the county superintendent or district superintendent demonstrates that programs and services for pregnant minors, such as continuation school, home instruction, or independent instruction, are available from other local education agencies in the county, pursuant to rules and regulations adopted by the Superintendent of Public Instruction.

(b) Pregnant minors programs that continue to operate pursuant to subdivision (a) and that continue to operate as Cal-SAFE programs shall be authorized to continue the actual enrollment and may continue the funding level provided in the 1998–99 fiscal year or may receive funding pursuant to Section 54749, for no more than the actual enrollment of that year. Programs continuing under this section may enroll pupils above the 1998–99 actual enrollment, and that additional enrollment shall be eligible for funding pursuant to Section 54749.

(c) Nothing in this section shall be construed as allowing a county superintendent to receive funding pursuant to this section and Section 54749 for the same average daily attendance.

SEC. 6. Section 8902 of the Education Code is repealed.

SEC. 7. Chapter 6.5 (commencing with Section 8910) of Part 6 of the Education Code is repealed.

SEC. 8. Section 17293 of the Education Code is amended to read:

17293. (a) On or after January 1, 1993, if a county superintendent or school district elects to operate a new or expanded pregnant and parenting teen program pursuant to Article 7.1 (commencing with Section 54740) of Chapter 9 of Part 29, the county superintendent or school district may enter into lease agreements for school facilities as set forth in subdivision (b), if both of the following conditions are met:

(1) All available school facilities conform to the requirements of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17320).

(2) If facilities meeting the requirements of paragraph (1) are not available, the school district or county superintendent of schools has applied to lease or purchase emergency portable classrooms pursuant to Chapter 14 (commencing with Section 17085) of Part 10 and the application was either not approved or the portable

classrooms approved will not meet the needs of the county superintendent of schools or the school district.

(b) Notwithstanding any other provision of law, the county superintendent or the school district may enter into lease agreements as follows:

(1) A report and certification of safety shall be prepared by a structural engineer that verifies that the building meets local safety standards and that substantial structural hazards do not exist. The county board of education or school district governing board, as the case may be, shall review the report and certification prior to the approval of the lease and may reject the report if there is evidence of fraud regarding the facts in the report. In addition, the county board of education or the governing board of the school district shall cause to be prepared and maintained on file a report and certification of safety by a structural engineer every five years from the date of the initial lease as long as the building continues to be used and a statement that the building continues to meet local safety standards and that structural hazards do not exist.

(2) Before entering into any lease, the county superintendent or the school district shall certify that all reasonable efforts have been made to locate programs in facilities that conform to paragraph (1) or (2) of subdivision (a).

SEC. 9. Section 49553 of the Education Code is amended to read:

49553. (a) A nutritionally adequate meal, for the purposes of this article, is a breakfast or lunch as defined in Section 49531 that qualifies for reimbursement under the federal child nutrition program regulations.

(b) (1) (A) For the purposes of special school nutrition supplements provided to pregnant or lactating pupils under Section 49559, protein and grain meal components for any given day shall, together, offer a total of five ounces of protein, one ounce of which shall be cheese or eight ounces of milk and three servings from the grain group, preferably whole and nutritious grains. This may be accomplished by adding one ounce of protein and one serving from the grain group at breakfast or serving these as a snack, and by adding one or two ounces of protein, one ounce of which shall be cheese or eight ounces of milk, to lunch, or by offering a morning supplement consisting of two or three ounces of protein, one ounce of which must be cheese, or eight ounces of milk, and one or two servings from the grain group.

(B) Meal components where only breakfast is served shall be increased to a total including one ounce of protein and two servings from the grain group, preferably whole and nutritious grains.

(C) Where both breakfast and lunch are provided, they shall, together, provide a total of five ounces of protein foods, one ounce of which shall be cheese, three servings from the grain group, preferably whole and nutritious grains, one and one-fourth cups from the fruit and vegetable group, and one pint from the milk group.

(2) The following options shall be allowed:

(A) One cup of fruit in place of one serving of the grain group, once a week.

(B) One cup of unsweetened yogurt, made with pasteurized milk, in place of eight ounces of milk or one ounce of cheese, up to two times per week.

SEC. 10. Section 49559 of the Education Code is amended to read:

49559. (a) Any school food authority that participates in a federal child nutrition program and is reimbursed pursuant to subdivision (b) of Section 41350 for meals served pursuant to this article may be reimbursed at the current rate as determined by the State Department of Education, pursuant to subdivision (d). If the sum appropriated for purposes of this section is not sufficient to make the allowances specified by this section, the allowances shall be reduced proportionately. This rate shall be in addition to the reimbursement currently provided under Section 49536. The additional funds shall be used exclusively to supplement the meals served pursuant to Section 49550.

(b) The State Department of Education shall make allowances to school food authorities from the General Fund on at least a quarterly basis. Program providers shall submit claims to the department within 10 calendar days of the end of each quarter. Within 45 calendar days of submission of a valid claim, the State Department of Education shall tender reimbursement.

(c) (1) The State Department of Education shall, upon enactment of the annual Budget Act, prescribe an adjustment in the state meal contribution rates for the next fiscal year. The adjustments shall reflect the changes in the cost of operating a school breakfast, snack, morning supplement, and lunch program and shall be effective July 1 of each year. The adjustment shall be based on the average of the separate indices of the "Food Away From Home Index" for Los Angeles and San Francisco, as prepared by the United States Bureau of Labor Statistics.

(2) In giving effect to the cost-of-living provisions of this subdivision, the State Department of Education shall prescribe a calendar month for the computation of the percentage change in the cost of living after July 1, 1985. The same month shall be used annually thereafter. The product of any percentage increase or decrease in the average index and the per meal reimbursement disbursement rate shall be adjusted by the amount of any cost-of-living change currently in effect pursuant to this subdivision. For the purposes of this subdivision, state reimbursement shall be made for the breakfast or lunch which qualifies for reimbursement pursuant to the nutritional requirements of Section 49553.

SEC. 11. Article 7.1 (commencing with Section 54740) is added to Chapter 9 of Part 29 of the Education Code, to read:

Article 7.1. California School Age Families Education Program

54740. This article shall be known and may be cited as the California School Age Families Education Program (Cal-SAFE).

54741. The Legislature hereby finds and declares all of the following:

(a) Adolescents, due to early pregnancy and childbearing, experience significant educational losses leading to a lifelong loss of schooling.

(b) Although less than a quarter of California's pregnant and parenting teen mothers use welfare as teenagers, over time they make up a significant percentage of the AFDC caseload. Half of all unmarried teen mothers go on welfare within four years of the birth of their children and 42 percent of all AFDC mothers began families as teenagers.

(c) In 1995, there were 123,240 pregnant and parenting mothers age 18 years and younger.

(d) Approximately one-quarter of teen mothers in California will experience a second or subsequent birth while in their teen years.

(e) The number one reason cited by females for dropping out of school is pregnancy and parenting responsibilities, although existing school data collection systems do not include the number of pregnant and parenting pupils enrolled in school nor the number who drop out of school due to pregnancy and parenting responsibilities.

(f) Eighty percent of females who become mothers before the age of 18 do not finish high school, and 40 percent of females who give birth by age 15 do not complete the 8th grade.

(g) Young women with poor basic skills, regardless of ethnicity, are five times as likely to become mothers before age 16 as are those with average basic skills, and young women with poor or fair basic skills are four times as likely as those with average basic skills to have more than one child in their teens.

(h) Teen fathers are at high risk of low educational achievement, as they are more likely to drop out of school to secure low-paying, unskilled jobs with little promise of future improvement.

(i) Children of teenage mothers have a greater chance of experiencing behavior problems during adolescence, engaging in delinquent or criminal activities, becoming sexually active at a young age, and becoming teen parents.

(j) School-based programs for pregnant and parenting teens and their children offering a wide range of educational and supportive services, including child care and transportation, which begin during pregnancy and continue after childbirth, have been successful in increasing school enrollment and high school graduation rates, and reducing the incidence of low birth weight babies and repeat pregnancies.

(k) School-based programs targeting pregnant and parenting teens and their children are often nonexistent or fragmented, have

inequitable program funding, lack comprehensive integrated school-linked services, lack useful school data, and often have not been evaluated.

54742. (a) It is the intent of the Legislature to establish a comprehensive, continuous, and community linked school-based program that focuses on youth development and dropout prevention for pregnant and parenting pupils and on child care and development services for their children for the purpose of improving results for approximately 60,000 pupils and their children.

(b) The goals of the program are all of the following:

(1) A significant number of eligible female and male pupils in need of targeted supportive services related to school success will be served.

(2) Pupils shall have the opportunity to be continuously enrolled in the Cal-SAFE program through graduation from high school.

(3) Pupils served who receive program services for one or more years will earn a high school diploma or its equivalent.

(4) Pupils served who graduate will transition to postsecondary education, including a technical school, or into the world of work.

(5) Pupils served and their children will not become welfare dependent.

(6) Pupils served will demonstrate effective parenting skills.

(7) Pupils served will not have a repeat birth or father a repeat pregnancy before graduating from high school.

(8) Pregnant pupils served will not have a low birth weight baby.

(9) Children of enrolled teen parents will receive child care and development services based upon the assessed developmental and health needs of each child.

(10) Children of enrolled teen parents will receive health screening and immunizations except when the custodial parent annually provides a written request for an exemption pursuant to Section 49451 and Section 120365 of the Health and Safety Code.

(11) Children of enrolled teen parents will have enhanced school readiness.

(c) It is the intent of the Legislature that if there are not enough resources to serve all eligible pupils, the program shall target services to pupils who are most in need or to pupils who are least likely to access services on their own.

(d) It is the intent of the Legislature that Cal-SAFE programs be integrated with local Adolescent Family Life programs and Cal-Learn programs in a manner that avoids duplication of services.

54743. For the purposes of this chapter, the following definitions shall apply:

(a) "Case management" means a process that ensures that the pupil and child receive identified needed services in an efficient, supportive, and cost-effective manner. The process is interactive, pupil-centered, culturally appropriate, and goal-oriented.

(b) "Child care and development program" means developmentally appropriate learning activities for the children of enrolled teen parents that are provided when the child's teen parent is, or parents are, participating in a school-approved activity both during and outside the school day.

(c) "Consortium" means two or more local education agencies.

(d) "Intake process" means the interactive process upon entry into the Cal-SAFE program through which academic and service needs are inventoried and demographic data are collected.

(e) "Interventions" means services needed to correct or ameliorate a pupil's health, psychosocial, educational, vocational, daily living, or economic problems, which may impede the pupil from achieving the program goals.

(f) "Local education agency" means a school district or county office of education.

(g) "Support services" means services, as referenced in subdivision (b) and (d) of Section 54747, that will enhance the academic ability of the enrolled pupil in order for her or him to earn a high school diploma or its equivalent and for healthy development of their children.

(h) "Title IX of the Education Amendments of 1972 Regulations" refers to federal Public Law 92-318 and the regulations set forth in Section 106.1 and following of Title 34 of the Code of Federal Regulations, which prohibit discrimination against pupils, among other things, because of their pregnant or parenting status.

54744. (a) It is the intent of the Legislature that communities implementing new programs or initiatives connect with existing program strategies and build upon existing local collaboratives, when possible, to provide a unified integrated system of service for children and families.

(b) No application for participation in the Cal-SAFE program is complete unless each county superintendent of schools, in conjunction with superintendents of school districts, the Adolescent Family Life Program, the Cal-Learn program, the local child care and development planning council as defined by Section 8499.5, and, as appropriate, other existing organizations such as Healthy Start and local job training councils, have developed a county service coordination plan for providing educational and related support services to pregnant and parenting teens and their children.

(c) The county service coordination plan shall include, at a minimum, all of the following information:

(1) Incidence of live births to teen mothers by ZIP Code.

(2) Incidence of pregnant and parenting pupils receiving welfare aid by ZIP Code.

(3) Incidence of low birth weight children born to teen mothers by ZIP Code.

(4) Educational alternatives for pregnant and parenting teens.

(5) Child care and development resources for the children of teen parents.

(6) Public and private resources providing support services necessary for pregnant and parenting teens to achieve academically.

(7) Gaps and overlaps in educational and support services for pregnant and parenting pupils and their children.

(8) Proposed strategies to address identified gaps and overlaps in services.

(d) The county service coordination plan shall be submitted to the State Department of Education no later than June 30, 1999.

(e) If the county service coordination plan is not submitted to the State Department of Education by June 30, 1999, a local education agency may only operate a Cal-SAFE program on an interim basis until January 1, 2000.

(f) The county superintendent of schools, in conjunction with superintendents of school districts, the Adolescent Family Life Program, the Cal-Learn program, the local child care and development planning council as defined by Section 8499.5, and, as appropriate, other existing organizations such as Healthy Start and local job training councils, shall annually review the county service coordination plan, update the plan as needed, disseminate the revised plan to superintendents of school districts within its jurisdiction, and submit a copy of the revised plan to the State Department of Education.

54745. (a) In the administration of the Cal-SAFE program, the following provisions shall apply:

(1) Participation by a school district or county superintendent of schools in the Cal-SAFE program is voluntary.

(2) The governing board of a school district or county superintendent of schools may individually, or jointly as a consortium of governing boards of school districts or county superintendents of schools, or both, submit an application to the State Department of Education in the manner, form, and date specified by the department to establish and maintain a Cal-SAFE program.

(3) A school district or county superintendent of schools, alone or as a member of a consortium of school districts or county superintendents of schools, or both, approved to implement the Cal-SAFE program shall be funded as one program to be operated at one or multiple sites depending upon the need within the service area.

(4) Notwithstanding any other provision of law, a school district or county superintendent of schools operating a School Age Parent and Infant Development Program pursuant to Article 17 (commencing with Section 8390) of Chapter 2 of Part 6, a Pregnant Minors Program pursuant to Chapter 6 (commencing with Section 8900) of Part 6 and Section 2551.3, or a Pregnant and Lactating Students Program pursuant to Sections 49553 and 49559, as those provisions existed prior to the operative date of the act that adds this

article, or any combination thereof, that chooses to participate in the Cal-SAFE program shall have priority for Cal-SAFE program funding for an amount up to the dollar amount provided under those provisions in the fiscal year prior to participation in the Cal-SAFE program, provided an application is submitted and approved.

(5) If a school district or county superintendent of schools operating a School Age Parent and Infant Development Program, a Pregnant Minors Program, or a Pregnant and Lactating Students Program, or any combination thereof, chooses not to participate in the Cal-SAFE program, the funding it would have received for the operation of those programs shall be redirected to the Cal-SAFE program and the school district or county superintendent of schools may apply in a subsequent school year to operate a Cal-SAFE program.

(6) A school district or county superintendent of schools that terminates its Cal-SAFE program may reapply to establish a Cal-SAFE program.

(7) In order to continue implementation of the Cal-SAFE program beyond the initial three years of funding, each funded agency shall be reviewed by the department to determine progress towards achieving the goals set forth in Section 54742. Thereafter, funded agencies shall be reviewed and reauthorized every five years based upon a process determined by the department to continue implementation of a Cal-SAFE program.

(b) All of the following requirements shall apply to an application for the Cal-SAFE program:

(1) The governing board of a participating local education agency shall adopt a policy or resolution declaring its commitment to provide a comprehensive, continuous, community-linked program for pregnant and parenting pupils and their children that reflects the cultural and linguistic diversity of the community.

(2) The local education agency shall provide assurance for participation in the development of the County Service Coordination Plan as described in Section 54744.

(3) A school district or county superintendent of schools shall agree to participate in the data collection and evaluation of the Cal-SAFE program.

(c) To implement a Cal-SAFE program, the funded school district, county superintendent of schools, or consortium of school districts or county superintendents of schools, or both, shall meet all of the following criteria:

(1) Be in compliance with Title IX of the Education Amendments of 1972 Regulations.

(2) Ensure that enrolled pupils retain their right to participate in the regular school or educational alternative programs. School placement and instructional strategies shall be based upon the needs and styles of learning of the individual pupils. The classroom setting

shall be the preferred instructional strategy unless an alternative is necessary to meet the needs of the individual parent, child, or both.

(3) Enroll pupils into the Cal-SAFE program on an open entry and open exit basis.

(4) Provide a quality education program to pupils in a supportive and accommodating learning environment with appropriate classroom strategies to ensure school access and academic credit for all work completed.

(5) Provide a parenting education and life skills class to enrolled pupils.

(6) Make maximum utilization of available programs and facilities to serve pregnant and parenting pupils and their children.

(7) Provide a quality child care and development program for the children of enrolled teen parents located on or near the schoolsite.

(8) Make maximum utilization of its local school food service program.

(9) Provide special school nutrition supplements, as defined by subdivision (b) of Section 49553, to pregnant and lactating students.

(10) Enter into formal partnership agreements, as necessary, with community-based organizations and other governmental agencies to assist pupils in accessing support services.

(11) Provide staff development and community outreach in order to establish a positive learning environment and school policies supportive of pregnant and parenting pupils' academic achievement and to promote the healthy development of their children.

(12) Maintain an annual program budget and expenditure report to document that funds are expended pursuant to Section 54749.

(13) Assess no fees to enrolled pupils or their families for services provided through the Cal-SAFE program.

(14) Establish and maintain a data base in the manner and form prescribed by the State Department of Education for purposes of program evaluation.

54746. (a) In meeting the goals of the program and responding to the individual needs and differences of pupils and their children to be served, the funded agency shall complete an intake procedure regarding each pupil and child upon entry into the program and periodically as needed thereafter.

(b) Based upon the information provided during the intake procedure pursuant to subdivision (a), the funded agency shall determine appropriate levels and types of services to be provided. These services may not duplicate services currently provided to the pupil by a local Adolescent Family Life Program or Cal-Learn program. In addition to an academic program that meets district standards, necessary support services for pupils shall be funded by the calculation pursuant to paragraph (1) of subdivision (a) of Section 54749. Allowable expenditures for support services are as follows:

(1) Parenting education and life skills class.

(2) Perinatal education and care, including childbirth preparation.

(3) Safe home-to-school transportation.

(4) Case management services.

(5) Comprehensive health education including reproductive health care.

(6) Nutrition education, counseling, and meal supplements.

(7) School safety and violence prevention strategies targeted to pregnant and parenting teens and their children.

(8) Academic support and youth development services, such as tutoring, mentoring, and community service internships.

(9) Career counseling, preemployment skills, and job training.

(10) Substance abuse prevention education, counseling, and treatment services.

(11) Mental health assessment, interventions, and referrals.

(12) Crisis intervention counseling services, including suicide prevention.

(13) Peer support groups and counseling.

(14) Family support and development services, including individual and family counseling.

(15) Child and domestic abuse prevention education, counseling, and services.

(16) Enrichment and recreational activities, as appropriate.

(17) Services that facilitate transition to postsecondary education, training, or employment.

(18) Support services for grandparents, siblings, and fathers of babies who are not enrolled in the Cal-SAFE program.

(19) Outreach activities to identify eligible pupils and to educate the community about the realities of teen pregnancy and parenting.

(c) The funded agency shall provide child care and development program services located on or near the schoolsite for the children of teen parents enrolled in the Cal-SAFE program. Program services shall be funded by the revenue generated pursuant to paragraph (2) of subdivision (a) of Section 54749.

(1) Participation in the child care and development component of the Cal-SAFE program shall be voluntary.

(2) There is no minimum age for enrollment, but the child shall be eligible for enrollment in the child care and development component until the age of five years or the child is enrolled in kindergarten, whichever occurs first, as long as the teen parent is enrolled in the Cal-SAFE program.

(3) Each child shall have a health evaluation form signed by a physician, or his or her designee, before the child is allowed on the school campus or is enrolled in the child care and development program. Health screening and immunizations shall not be required when the custodial parent annually files a written request as provided for in Section 49451 and Section 120365 of the Health and Safety Code.

(4) A developmental profile shall be maintained for each infant, toddler, and child. This development profile shall be utilized by the program staff to design a program that meets the infant's, toddler's, or child's developmental needs.

(5) The arrangement of the child care site environment shall be safe, healthy, and comfortable for children and staff, easily maintained, and appropriate for meeting the developmental needs of the individual child. Child care sites shall meet the health and safety requirements specified in Chapter 1 (commencing with Section 1429) of, and Chapter 2 (commencing with Section 1442) of, Division 12 of Title 22 of the California Code of Regulations.

(6) The child care and development component of the Cal-SAFE program shall operate pursuant to applicable sections of Chapter 2 (commencing with Section 8200) of Part 6. In addition to meeting the requirements of Section 8360, teachers shall have at least three semester units, or the equivalent number of quarter units, of coursework related to the care of infants and toddlers.

(7) The child care site shall be available as a laboratory for parenting or related courses that are offered by the funded agency to pupils whether or not they are enrolled in the Cal-SAFE program.

(d) Inservice training for school staff on teen pregnancy and parenting related issues may be funded from revenue generated pursuant to paragraphs (1) and (2) of subdivision (a) of Section 54749. However, use of these funds for this purpose shall supplement and, not supplant, existing resources in these areas.

54747. (a) A male or female pupil, 18 years of age or younger, may enroll in the Cal-SAFE program and be eligible for all services afforded to pupils enrolled if he or she is an expectant parent, the custodial parent, or the noncustodial parent taking an active role in the care and supervision of the child, and has not earned a high school diploma or its equivalent.

(b) A pupil having an active special education Individualized Education Plan (IEP) shall be eligible until age 22, as long as she or he has an active IEP and meets the eligibility criteria as specified in subdivision (a), and shall continue to receive services identified in the IEP while enrolled in the Cal-SAFE program.

(c) Pupils shall be eligible for enrollment on a voluntary basis for as long as they meet eligibility criteria specified in subdivisions (a) and (b) until they earn a high school diploma or its equivalent.

(d) If an enrolled 18-year-old pupil reaches age 19 without earning a high school diploma or its equivalent, the pupil may be enrolled for one additional semester if the pupil has been continuously enrolled in the Cal-SAFE program since before his or her 19th birthday.

(e) Pupils receiving services under Article 3.5 (commencing with Section 11331) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code are eligible for services under this chapter. Child care provided under this article shall be the primary source of child

care for these recipients when participating in a Cal-SAFE program operated by school districts or county superintendents of schools.

(f) The participating school district, county superintendent of schools, or consortium of school districts or county superintendents of schools, or both, and case managers provided pursuant to Section 11332.5 of the Welfare and Institutions Code shall coordinate services to the maximum extent possible.

54748. The duties of the State Department of Education include all of the following:

(a) Provision of technical assistance, focused upon transition into the Cal-SAFE program, to school districts and county superintendents of schools currently operating a School Age Parent and Infant Development Program, a Pregnant Minors Program, or a Pregnant and Lactating Students Program, or any combination thereof.

(b) Provision of technical assistance to school districts and county superintendents of schools which do not currently operate a School Age Parent and Infant Development Program, a Pregnant Minors Program, or a Pregnant and Lactating Students Program as defined by subdivision (a) of Section 54745.

(c) Identification and sharing of information on best practices across program sites.

(d) Development of benchmarks to determine to what degree students and children enrolled in the Cal-SAFE program attain the program goals.

(e) Consultation with local education agency representatives and others, as appropriate, to develop strategies for implementation of the Cal-SAFE program.

(f) Determination of areas in the state where there are pupils who are most in need or pupils who are least likely to access services on their own if there are not enough resources to serve all eligible pupils.

(g) Development of an application process and approval of local education agencies to implement a Cal-SAFE program.

(h) Development of operating guidelines for implementing an effective Cal-SAFE program.

(i) Development of guidelines for fiscal reporting.

(j) Coordination with other state agencies that administer teen pregnancy prevention and intervention programs.

(k) Development of procedures to conduct program evaluation and monitoring, as appropriate.

(*l*) Commencing March 1, 2004, and every five years thereafter, preparation and submission of a report to the Joint Legislative Budget Committee and appropriate policy and fiscal committees of the Legislature. The report shall include data, analysis of data, and an evaluation of the Cal-SAFE program.

54749. (a) For the 1999–2000 fiscal year and each fiscal year thereafter, a school district or county superintendent of schools, alone or as a member of a consortium of school districts or county

superintendents of schools, or both, participating in Cal-SAFE shall be eligible for state funding from funds appropriated in the annual Budget Act for services provided under the program as follows:

(1) Six thousand five hundred dollars ($6,500) per unit of average daily attendance generated by pupils served, adjusted annually by the inflation factor set forth in subdivision (b) of Section 42238.1, and reduced by the state and local base revenue limit funding that is generated by the same average daily attendance.

(2) Reimbursement in accordance with subdivision (b) of Section 8265 and subdivisions (a) and (b) of Section 8265.5 for each child receiving services pursuant to the Cal-SAFE program who is the child of teen parents enrolled in the Cal-SAFE program.

(b) Funds allocated pursuant to paragraph (1) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide the supportive services enumerated in subdivisions (b) and (d) of Section 54746, to pupils enrolled in the Cal-SAFE program as determined pursuant to Section 54746. County offices of education shall utilize these funds to provide both an academic program and supportive services to enrolled pupils.

(c) Funds allocated pursuant to paragraph (2) of subdivision (a) shall be maintained in a separate account and shall be expended only to provide developmentally appropriate child care and development services pursuant to subdivision (c) of Section 54746 and staff development of child development program staff pursuant to subdivision (d) of Section 54746 for children of teen parents enrolled in the Cal-SAFE program, and shall be linked to the children's development comparable to age norms, access to health and preventive services, and enhanced school readiness.

(d) Funds generated pursuant to Section 2551.3 shall be maintained in a separate account and shall be expended only to provide the services enumerated in Section 54746 and the following expenditures as defined by the California State School Accounting Manual:

(1) Expenditures defined as direct costs of instructional programs.

(2) Expenditures defined as documented direct support costs.

(3) Expenditures defined as allocated direct support costs.

(4) Expenditures for indirect charges.

(5) Expenditures defined as facility costs, including the costs of renting, leasing, lease purchase, remodeling, or improving buildings.

(e) Indirect costs shall not exceed the lesser of the approved indirect cost rate or 10 percent.

(f) Expenditures that represent contract payments to community-based organizations and other governmental agencies pursuant to paragraph (10) of subdivision (b) of Section 54745 for the operation of a Cal-SAFE program shall be included in the Cal-SAFE program account.

(g) To the extent permitted by federal law, any funding made available to a school district or county superintendent of schools or consortium shall be subject to all of the following conditions:

(1) The program is open to all eligible pupils without regard to any pupil's religious beliefs or any other factor related to religion.

(2) No religious instruction is included in the program.

(3) The space in which the program is operated is not used in any manner to foster religion during the time used for operation of the program.

(h) A school district or county superintendent of schools implementing a Cal-SAFE program may establish a claims process to recover federal funds available for any services provided that are Medi-Cal eligible.

(i) For purposes of serving pupils enrolled in the Cal-SAFE program in a summer school program or enrolled in a school program operating more than 180 days, reimbursement for providing services pursuant to subdivision (c) of Section 54746 shall be based upon the number of instructional minutes.

(j) Up to 15 percent of the funds generated pursuant to paragraph (2) of subdivision (a) may be utilized for approvable start-up costs as defined in paragraphs (1) to (5), inclusive, of subdivision (a) of Section 8275.

(k) Notwithstanding any other provision of this article, its implementation is contingent upon appropriations in the annual Budget Act for the purpose of its administration and evaluation by the State Department of Education.

SEC. 12. It is the intent of the Legislature to address the increased facility needs imposed by this act. It is further the intent of the Legislature to address these needs through the enactment of legislation during the 2000 portion of the 1999-2000 Regular Session of the Legislature. Remedies may include, but are not limited to, specific funding authorizations through budget appropriations, eligibility under the Leroy F. Greene Lease-Purchase Law, or other appropriate action designed to ensure adequate facilities to house programs established pursuant to this act.

SEC. 13. Sections 1 to 10, inclusive, of this act shall become operative upon completion of the application and selection process for the Cal-SAFE program by the State Department of Education, but not before July 1, 1999.

CHAPTER 1079

An act to amend Section 6405 of, to amend the heading of Chapter 5.5 (commencing with Section 6400) of Division 3 of, to amend, repeal, and add Sections 6401, 6402, 6403, 6406, 6407, 6408, 6409, 6410, 6411, 6412, 6413, and 6415 of, to add and repeal Sections 6401.6, 6402.1,

6412.1, and 6416 of, and to repeal and add Section 6400 of, the Business and Professions Code, relating to legal document assistants.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. The heading of Chapter 5.5 (commencing with Section 6400) of Division 3 of the Business and Professions Code is amended to read:

CHAPTER 5.5. LEGAL DOCUMENT ASSISTANTS AND UNLAWFUL DETAINER ASSISTANTS

SEC. 2. Section 6400 of the Business and Professions Code is repealed.

SEC. 3. Section 6400 is added to the Business and Professions Code, to read:

6400. (a) "Unlawful detainer assistant" means any individual who for compensation renders assistance or advice in the prosecution or defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

(b) "Unlawful detainer claim" means a proceeding, filing, or action affecting rights or liabilities of any person that arises under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure and that contemplates an adjudication by a court.

(c) "Legal document assistant" means:

(1) Any person who is not exempted under Section 6401 and who provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter, or who holds himself or herself out as someone who offers that service or has that authority. This paragraph shall not apply to any individual whose assistance consists merely of secretarial or receptionist services.

(2) A corporation, partnership, association, or other entity that employs or contracts with any person not exempted under Section 6401 who, as part of his or her responsibilities, provides, or assists in providing, or offers to provide, or offers to assist in providing, for compensation, any self-help service to a member of the public who is representing himself or herself in a legal matter or holds himself or herself out as someone who offers that service or has that authority. This paragraph shall not apply to an individual whose assistance consists merely of secretarial or receptionist services.

(d) "Self-help service" means all of the following:

(1) Completing legal documents in a ministerial manner, selected by a person who is representing himself or herself in a legal matter, by typing or otherwise completing the documents at the person's specific direction.

(2) Providing general published factual information that has been written or approved by an attorney, pertaining to legal procedures, rights, or obligations to a person who is representing himself or herself in a legal matter, to assist the person in representing himself or herself. This service in and of itself, shall not require registration as a legal document assistant.

(3) Making published legal documents available to a person who is representing himself or herself in a legal matter.

(4) Filing and serving legal forms and documents at the specific direction of a person who is representing himself or herself in a legal matter.

(e) "Compensation" means money, property, or anything else of value.

(f) A legal document assistant shall not provide any self-help service for compensation after January 1, 2000, unless the legal document assistant is registered in the county in which the services are being provided.

(g) A legal document assistant shall not provide any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by paragraph (3) of subdivision (d).

(h) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 4. Section 6400 is added to the Business and Professions Code, to read:

6400. (a) "Unlawful detainer assistant" means any individual who for compensation renders assistance or advice in the prosecution or defense of an unlawful detainer claim or action, including any bankruptcy petition that may affect the unlawful detainer claim or action.

(b) "Unlawful detainer claim" means a proceeding, filing, or action affecting rights or liabilities of any person that arises under Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure and that contemplates an adjudication by a court.

(c) "Compensation" means money, property, or anything else of value.

(d) This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 5. Section 6401 of the Business and Professions Code is amended to read:

6401. This chapter does not apply to any of the following:

(a) Any government employee who is acting in the course of his or her employment.

(b) A member of the State Bar of California, or his or her employee, paralegal, or agent, or an independent contractor while acting on behalf of a member of the State Bar.

(c) Any employee of a nonprofit, tax-exempt corporation who assists clients free of charge.

(d) A licensed real estate broker or licensed real estate salesperson, as defined in Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, who acts pursuant to subdivision (b) of Section 10131 on an unlawful detainer claim as defined in subdivision (b) of Section 6400, and who is a party to the unlawful detainer action.

(e) An immigration consultant, as defined in Chapter 19.5 (commencing with Section 22441) of Division 8.

(f) A person registered as a process server under Chapter 16 (commencing with Section 22350) or a person registered as a professional photocopier under Chapter 20 (commencing with Section 22450) of Division 8.

(g) A person who provides services relative to the preparation of security instruments or conveyance documents as an integral part of the provision of title or escrow service.

(h) A person who provides services that are regulated by federal law.

(i) A person who is employed by, and provides services to, a supervised financial institution, holding company, subsidiary or affiliate.

(j) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 6. Section 6401 is added to the Business and Professions Code, to read:

6401. This chapter does not apply to any of the following:

(a) Any government employee who is acting in the course of his or her employment.

(b) An active member of the State Bar of California, or his or her employee or agent, acting under the member's supervision, or an

independent contractor while acting on behalf of, and under the supervision of, the member.

(c) Any employee of a nonprofit, tax-exempt corporation who assists clients free of charge.

(d) A licensed real estate broker or licensed real estate salesperson, as defined in Chapter 3 (commencing with Section 10130) of Part 1 of Division 4, who acts pursuant to subdivision (b) of Section 10131 on an unlawful detainer claim as defined in subdivision (b) of Section 6400, and who is a party to the unlawful detainer action.

(e) This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 7. Section 6401.6 is added to the Business and Professions Code, to read:

6401.6. A legal document assistant shall not provide service to a client who requires assistance that exceeds the definition of self-help service in subdivision (b) of Section 6400, and shall inform the client that the client requires the services of an attorney.

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. 8. Section 6402 of the Business and Professions Code is amended to read:

6402. A legal document assistant or unlawful detainer assistant shall be registered pursuant to this chapter by the county clerk of each county in which he or she performs acts for which registration is required. No person who has been disbarred or suspended from the practice of law pursuant to Article 6 (commencing with Section 6100) of Chapter 4 shall, during the period of any disbarment or suspension, register as a legal document assistant or unlawful detainer assistant. The Department of Consumer Affairs shall, by July 1, 1999, develop the application that shall be completed by a person for purposes of registration as a legal document assistant. The application shall specify the types of proof that the applicant shall provide to the county clerk in order to demonstrate the qualification and requirements of Section 6402.1.

This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 9. Section 6402 is added to the Business and Professions Code, to read:

6402. An unlawful detainer assistant shall be registered pursuant to this chapter by the county clerk of each county in which he or she

performs acts for which registration is required. No person who has been disbarred or suspended from the practice of law pursuant to Article 6 (commencing with Section 6100) of Chapter 4 shall, during the period of any disbarment or suspension, register as an unlawful detainer assistant.

This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 9.5. Section 6402.1 is added to the Business and Professions Code, to read:

6402.1. To be eligible to apply for registration under this chapter as a legal document assistant, the applicant shall possess at least one of the following:

(a) A high school diploma or general equivalency diploma, and either a minimum of two years of law-related experience under the supervision of a licensed attorney, or a minimum of two years experience, prior to January 1, 1999, providing self-help service.

(b) A baccalaureate degree in any field and either a minimum of one year of law-related experience under the supervision of a licensed attorney, or a minimum of one year of experience, prior to January 1, 1999, providing self-help service.

(c) A certificate of completion from a paralegal program that is institutionally accredited but not approved by the American Bar Association, that requires successful completion of a minimum of 24 semester units, or the equivalent, in legal specialization courses.

(d) A certificate of completion from a paralegal program approved by the American Bar Association.

(e) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 10. Section 6403 of the Business and Professions Code is amended to read:

6403. (a) The application for registration of a natural person shall contain all of the following statements about the applicant:

(1) Name, age, address, and telephone number.

(2) Whether he or she has been convicted of a felony, or of a misdemeanor under Section 6126 or 6127.

(3) Whether he or she has been held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, or the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(4) Whether he or she has ever been convicted of a misdemeanor violation of this chapter.

(5) Whether he or she has had a civil judgment entered against him or her in an action arising out of the applicant's negligent,

reckless, or willful failure to properly perform his or her obligation as a legal document assistant or unlawful detainer assistant.

(6) Whether he or she has had a registration revoked pursuant to Section 6413.

(b) The application for registration of a natural person shall be accompanied by the display of personal identification, such as a California driver's license, birth certificate, or other identification acceptable to the county clerk to adequately determine the identity of the applicant.

(c) The application for registration of a partnership or corporation shall contain all of the following statements about the applicant:

(1) The names, ages, addresses, and telephone numbers of the general partners or officers.

(2) Whether the general partners or officers have ever been convicted of a felony, or a misdemeanor under Section 6126 or 6127.

(3) Whether the general partners or officers have ever been held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, or the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(4) Whether the general partners or officers have ever been convicted of a misdemeanor violation of this chapter.

(5) Whether the general partners or officers have had a civil judgment entered against them in an action arising out of a negligent, reckless, or willful failure to properly perform the obligations of a legal document assistant or unlawful detainer assistant.

(6) Whether the general partners or officers have ever had a registration revoked pursuant to Section 6413.

(d) The applications made under this section shall be made under penalty of perjury.

(e) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 11. Section 6403 is added to the Business and Professions Code, to read:

6403. (a) The application for registration of a natural person shall contain all of the following statements about the applicant:

(1) Name, age, address, and telephone number.

(2) Whether he or she has been convicted of a felony, or of a misdemeanor under Section 6126 or 6127.

(3) Whether he or she has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment, if the action alleged fraud, or the use of untrue or misleading representations, or the use of an unfair, unlawful, or deceptive business practice.

(b) The application for registration of a partnership or corporation shall contain all of the following statements about the applicant:

(1) The names, ages, addresses, and telephone numbers of the general partners or officers.

(2) Whether the general partners or officers have ever been convicted of a felony.

(3) Whether the general partners or officers have ever been held liable in a civil action by final judgment or have consented to the entry of a stipulated judgment. If the action alleged fraud, whether it involved the use of untrue or misleading representations, or the use of an unfair, unlawful, or deceptive business practice.

(c) This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 12. Section 6405 of the Business and Professions Code is amended to read:

6405. (a) An application for a certificate of registration shall be accompanied by a bond of twenty-five thousand dollars ($25,000) executed by a corporate surety qualified to do business in this state and conditioned upon compliance with this chapter. The total aggregate liability on the bond shall be limited to twenty-five thousand dollars ($25,000). The bond may be terminated pursuant to Section 995.440 of, and Article 13 (commencing with Section 996.310) of Chapter 2 of Title 14 of Part 2 of, the Code of Civil Procedure.

(b) The county clerk shall, upon filing of the bond, deliver the bond forthwith to the county recorder for recording. The recording fee specified in Section 27361 of the Government Code shall be paid by the registrant. The fee may be paid to the county clerk, who shall transmit it to the recorder.

(c) The fee for filing, canceling, revoking, or withdrawing the bond is seven dollars ($7).

(d) The county recorder shall record the bond and any notice of cancellation, revocation, or withdrawal of the bond, and shall thereafter mail the instrument, unless specified to the contrary, to the person named in the instrument and, if no person is named, to the party leaving it for recording. The recording fee specified in Section 27361 of the Government Code for notice of cancellation, revocation, or withdrawal of the bond shall be paid to the county clerk, who shall transmit it to the county recorder.

(e) In lieu of the bond required by subdivision (a), a registrant may deposit twenty-five thousand dollars ($25,000) in cash with the county clerk.

(f) If the certificate is revoked, the bond or cash deposit shall be returned to the bonding party or depositor subject to subdivision (g) and the right of a person to recover against the bond or cash deposit under Section 6412.

(g) The county clerk may retain a cash deposit until the expiration of three years from the date the registrant has ceased to do business, or three years from the expiration or revocation date of the registration, in order to ensure there are no outstanding claims against the deposit. A judge of a municipal or superior court may order the return of the deposit prior to the expiration of three years upon evidence satisfactory to the judge that there are no outstanding claims against the deposit.

SEC. 12.5. Section 6406 of the Business and Professions Code is amended to read:

6406. (a) If granted, a certificate of registration shall be effective for a period of two years. Thereafter, a registrant shall file an application for renewal of registration and pay the fee required by Section 6404.

(b) Except as provided in subdivisions (d) to (f), inclusive, an applicant shall be denied registration or renewal of registration if the applicant has been any of the following:

(1) Convicted of a felony, or of a misdemeanor under Section 6126 or 6127.

(2) Held liable in a civil action by final judgment or entry of a stipulated judgment, if the action alleged fraud, or the use of an untrue or misleading representation, or the use of an unfair, unlawful, or deceptive business practice.

(3) Convicted of a misdemeanor violation of this chapter.

(4) Had a civil judgment entered against him or her in an action arising out of the applicant's negligent, reckless, or willful failure to properly perform his or her obligation as a legal document assistant or unlawful detainer assistant.

(5) Had his or her registration revoked pursuant to Section 6413.

(c) If the county clerk finds that the applicant has failed to demonstrate having met the requisite requirements of Section 6402 or 6402.1, or that any of the paragraphs of subdivision (b) apply, the county clerk, within three business days of submission of the application and fee, shall return the application and fee to the applicant with a notice to the applicant indicating the reason for the denial and the method of appeal.

(d) The denial of an application may be appealed by the applicant by submitting, to the director, the following:

(1) The completed application and notice from the county clerk specifying the reasons for the denial of the application.

(2) A copy of any final judgment or order that resulted from any conviction or civil judgment listed on the application.

(3) Any relevant information the applicant wishes to include for the record.

(e) The director shall order the applicant's certificate of registration to be granted if the director determines that the issuance of a certificate of registration is not likely to expose consumers to a significant risk of harm based on a review of the application and any

other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall order the applicant's certificate of registration to be denied if the director determines that issuance of a certificate of registration is likely to expose consumers to a significant risk of harm based on a review of the application and any other information relating to the applicant's unlawful act or unfair practice described in paragraphs (1) to (5), inclusive, of subdivision (b). The director shall send to the applicant and the county clerk a written decision listing the reasons registration shall be granted or denied within 30 days of the submission of the matter.

(f) If the director orders that the certificate of registration be granted, the applicant may resubmit the application, with the appropriate application fee and the written decision of the director. The county clerk shall grant the certificate of registration to the applicant within three business days of being supplied this information.

(g) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 12.6. Section 6406 is added to the Business and Professions Code, to read:

6406. (a) A certificate of registration shall be effective for a period of two years. Thereafter, a registrant shall file an application for renewal of registration and pay the fee required by Section 6404.

(b) This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 13. Section 6407 of the Business and Professions Code is amended to read:

6407. (a) The county clerk shall maintain a register of legal document assistants, and a register of unlawful detainer assistants, assign a unique number to each legal document assistant, or unlawful detainer assistant, and issue an identification card to each one. Additional cards for employees of legal document assistants or unlawful detainer assistants shall be issued upon the payment of ten dollars ($10) for each card. Upon renewal of registration, the same number shall be assigned, provided there is no lapse in the period of registration.

(b) The identification card shall be a card 3 $^1/_2$ inches by 2 $^1/_4$ inches, and shall contain at the top, the title "Legal Document Assistant" or "Unlawful Detainer Assistant," as appropriate, followed by the registrant's name, address, registration number, date of expiration, and county of registration. It shall also contain a

photograph of the registrant in the lower left corner. The front of the card, above the title, shall also contain the following statement in 12-point boldface type: "This person is not a lawyer." The front of the card, at the bottom, shall also contain the following statement in 12-point boldface type: "The county clerk has not evaluated this person's knowledge, experience, or services."

(c) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 14. Section 6407 is added to the Business and Professions Code, to read:

6407. (a) The county clerk shall maintain a register of unlawful detainer assistants, assign a unique number to each unlawful detainer assistant, and issue an identification card to each one. Additional cards for employees of unlawful detainer assistants shall be issued upon the payment of ten dollars ($10) for each card. Upon renewal of registration, the same number shall be assigned, provided there is no lapse in the period of registration.

(b) The identification card shall be a card 3 $^{1}/_{2}$ inches by 2 $^{1}/_{4}$ inches, and shall contain at the top, the title "Unlawful Detainer Assistant" followed by the registrant's name, address, registration number, date of expiration, and county of registration. It shall also contain a photograph of the registrant in the lower left corner.

(c) This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 15. Section 6408 of the Business and Professions Code is amended to read:

6408. The registrant's name, business address, telephone number, registration number, and county of registration shall appear on any solicitation or advertisement, and on any appropriate papers or documents prepared or used by the registrant, including, but not limited to, contracts, letterhead, business cards, correspondence, documents, forms, claims, petitions, checks, receipts, money orders, and pleadings.

This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 16. Section 6408 is added to the Business and Professions Code, to read:

6408. The registrant's registration number and county of registration shall appear on any solicitation or advertisement, and on the registrant's work product, including, but not limited to, letterhead, correspondence, documents, forms, claims, petitions, checks, receipts, money orders, pleadings, and other papers relating to unlawful detainer claims or actions.

This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 17. Section 6409 of the Business and Professions Code is amended to read:

6409. No legal document assistant or unlawful detainer assistant shall retain in his or her possession original documents of a client. A legal document assistant or an unlawful detainer assistant shall immediately return all of a client's original documents to the client in any one or more of the following circumstances: if the client so requests at any time; if the written contract required by Section 6410 is not executed or is rescinded, canceled, or voided for any reason; or when the services described pursuant to paragraph (1) of subdivision (b) of Section 6410 have been completed.

This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 18. Section 6409 is added to the Business and Professions Code, to read:

6409. No unlawful detainer assistant shall retain in his or her possession original documents of a client.

This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 19. Section 6410 of the Business and Professions Code is amended to read:

6410. (a) Every legal document assistant or unlawful detainer assistant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by regulations adopted by the Department of Consumer Affairs.

(b) The written contract shall include provisions relating to the following:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) There shall be printed on the face of the contract in 12-point boldface type a statement that the legal document assistant or

unlawful detainer assistant is not an attorney and may not perform the legal services that an attorney performs.

(4) The contract shall contain a statement in 12-point boldface type that the county clerk has not evaluated or approved the registrant's knowledge or experience, or the quality of the registrant's services.

(5) The contract shall contain a statement in 12-point boldface type that the consumer may obtain information regarding free or low-cost representation through a local bar association or legal aid foundation and that the consumer may contact local law enforcement, a district attorney, or a legal aid foundation if the consumer believes that he or she has been a victim of fraud, the unauthorized practice of law, or any other injury.

(6) The contract shall contain a statement in 12-point boldface type that a legal document assistant or unlawful detainer assistant is not permitted to engage in the practice of law, including providing any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies.

(c) The provisions of the written contract shall be stated both in English and in any other language comprehended by the client and principally used in any oral sales presentation or negotiation leading to execution of the contract. The legal document assistant or the unlawful detainer assistant shall be responsible for translating the contract into the language principally used in any oral sales presentation or negotiation leading to the execution of the contract.

(d) Failure of a legal document assistant or unlawful detainer assistant to comply with subdivisions (a), (b), and (c) shall make the contract or agreement for services voidable at the option of the client. Upon the voiding of the contract, the legal document assistant or unlawful detainer assistant shall immediately return in full any fees paid by the client.

(e) In addition to any other right to rescind, the client shall have the right to rescind the contract within 24 hours of the signing of the contract. The client may cancel the contract by giving the legal document assistant or the unlawful detainer assistant any written statement to the effect that the contract is canceled. If the client gives notice of cancellation by mail addressed to the legal document assistant or unlawful detainer assistant, with first-class postage prepaid, cancellation is effective upon the date indicated on the postmark. Upon the voiding or rescinding of the contract or agreement for services, the legal document assistant or unlawful detainer assistant shall immediately return to the client any fees paid by the client, except fees for services that were actually, necessarily, and reasonably performed on the client's behalf by the legal document assistant or unlawful detainer assistant with the client's knowing and express written consent. The requirements of this subdivision shall be conspicuously set forth in the written contract.

(f) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 20. Section 6410 is added to the Business and Professions Code, to read:

6410. (a) Every unlawful detainer assistant who enters into a contract or agreement with a client to provide services shall, prior to providing any services, provide the client with a written contract, the contents of which shall be prescribed by regulations adopted by the Department of Consumer Affairs.

(b) The written contract shall include provisions relating to the following:

(1) The services to be performed.

(2) The costs of the services to be performed.

(3) There shall be printed on the face of the contract in 12-point boldface type a statement that the unlawful detainer assistant is not an attorney and may not perform the legal services that an attorney performs.

(c) The provisions of the written contract shall be stated both in English and, if the client is non-English speaking, in the language of the client.

(d) Failure of an unlawful detainer assistant to comply with the provisions of subdivisions (a), (b), and (c) shall make the contract or agreement for services voidable at the option of the client. Upon the voiding of the contract, the unlawful detainer assistant shall immediately return in full any fees paid by the client.

(e) The client shall have the right to rescind the contract within 24 hours of the signing of the contract. Upon the voiding or rescinding of the contract or agreement for services, the unlawful detainer assistant shall immediately return to the client any fees paid by the client, except fees for services that were actually, necessarily, and reasonably performed on the client's behalf by the unlawful detainer assistant. The requirements of this subdivision shall be conspicuously set forth in the written contract in both English and, if the client is non-English speaking, in the language of the client.

(f) This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 21. Section 6411 of the Business and Professions Code is amended to read:

6411. It is unlawful for any person engaged in the business or acting in the capacity of a legal document assistant or unlawful detainer assistant to do any of the following:

(a) Make false or misleading statements to the consumer concerning the subject matter, legal issues, or self-help service being provided by the legal document assistant or unlawful detainer assistant.

(b) Make any guarantee or promise to a client or prospective client, unless the guarantee or promise is in writing and the legal document assistant or unlawful detainer assistant has a reasonable factual basis for making the guarantee or promise.

(c) Make any statement that the legal document assistant or unlawful detainer assistant can or will obtain favors or has special influence with a court, or a state or federal agency.

(d) Provide assistance or advice which constitutes the unlawful practice of law pursuant to Section 6125, 6126, or 6127.

(e) Engage in the unauthorized practice of law, including, but not limited to, giving any kind of advice, explanation, opinion, or recommendation to a consumer about possible legal rights, remedies, defenses, options, selection of forms, or strategies. A legal document assistant shall complete documents only in the manner prescribed by paragraph (3) of subdivision (d) of Section 6400.

(f) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 22. Section 6411 is added to the Business and Professions Code, to read:

6411. It is unlawful for any person engaged in the business or acting in the capacity of an unlawful detainer assistant to do any of the following:

(a) Make false or misleading statements to a client while providing services to that client.

(b) Make any guarantee or promise to a client, unless the guarantee or promise is in writing and the unlawful detainer assistant has some basis for making the guarantee or promise.

(c) Make any statement that the unlawful detainer assistant can or will obtain special favors or has special influence with a court, or a state or federal agency.

(d) Provide assistance or advice which constitutes the unlawful practice of law pursuant to Section 6125, 6126, or 6127.

(e) This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 23. Section 6412 of the Business and Professions Code is amended to read:

6412. (a) Any owner or manager of residential or commercial rental property, tenant, or other person who is awarded damages in

any action or proceeding for injuries caused by the acts of a registrant while in the performance of his or her duties as a legal document assistant or unlawful detainer assistant may recover damages from the bond or cash deposit required by Section 6405.

(b) Whenever there has been a recovery against a bond or cash deposit under subdivision (a) and the registration has not been revoked pursuant to Section 6413, the registrant shall file a new bond or deposit an additional amount of cash within 30 days to reinstate the bond or cash deposit to the amount required by Section 6405. If the registrant does not file a bond, or deposit this amount within 30 days, his or her certificate of registration shall be revoked.

(c) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 24. Section 6412 is added to the Business and Professions Code, to read:

6412. (a) Any owner or manager of residential or commercial rental property, tenant, or other person who is awarded damages in any action or proceeding for injuries caused by the acts of a registrant while in the performance of his or her duties as an unlawful detainer assistant may recover damages from the bond or cash deposit required by Section 6405.

(b) Whenever there has been a recovery against a bond or cash deposit under subdivision (a) and the registration has not been revoked pursuant to Section 6413, the registrant shall file a new bond or deposit an additional amount of cash within 30 days to reinstate the bond or cash deposit to the amount required by Section 6405. If the registrant does not file a bond, or deposit this amount within 30 days, his or her certificate of registration shall be revoked.

(c) This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 25. Section 6412.1 is added to the Business and Professions Code, to read:

6412.1. (a) Any person injured by the unlawful act of a legal document assistant or unlawful detainer assistant shall retain all rights and remedies cognizable under law. The penalties, relief, and remedies provided in this chapter are not exclusive, and do not affect any other penalties, relief, and remedies provided by law.

(b) Any person injured by a violation of this chapter by a legal document assistant or unlawful detainer assistant may file a complaint and seek redress in any municipal or superior court for injunctive relief, restitution, and damages. Attorney's fees shall be awarded to the prevailing plaintiff.

(c) This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 26. Section 6413 of the Business and Professions Code is amended to read:

6413. The county clerk shall revoke the registration of a legal document assistant or unlawful detainer assistant upon receipt of an official document or record stating that the registrant has been found guilty of the unauthorized practice of law pursuant to Section 6125, 6126, or 6127, has been found guilty of a misdemeanor violation of this chapter, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's negligent, reckless, or willful failure to properly perform his or her obligation as a legal document assistant or unlawful detainer assistant. The county clerk shall be given notice of the disposition in any court action by the city attorney, district attorney, or plaintiff, as applicable. A registrant whose registration is revoked pursuant to this section may reapply for registration after three years.

This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 27. Section 6413 is added to the Business and Professions Code, to read:

6413. The county clerk shall revoke the registration of an unlawful detainer assistant upon receipt of an official document or record stating that the registrant has been found guilty of the unauthorized practice of law pursuant to Section 6125, 6126, or 6127, has been found guilty of a misdemeanor violation of this chapter, or that a civil judgment has been entered against the registrant in an action arising out of the registrant's failure to properly perform his or her obligation as an unlawful detainer assistant. The county clerk shall be given notice of the disposition in any court action by the city attorney, district attorney, or plaintiff, as applicable. A registrant whose registration is revoked pursuant to this section may reapply for registration after one year.

This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 28. Section 6415 of the Business and Professions Code is amended to read:

6415. A failure, by a person who engages in acts of a legal document assistant or unlawful detainer assistant, to comply with any

of the requirements of Section 6401.6, 6402, 6408, or 6410, or subdivision (a), (b), or (c) of Section 6411 is punishable as a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) or more than two thousand dollars ($2,000), as to each client with respect to whom a violation occurs, or imprisonment for not more than one year, or by both that fine and imprisonment. Payment of restitution to a client shall take precedence over payment of a fine.

This section shall remain in effect only until January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs, and as of that date is repealed, unless a later enacted statute, that is enacted before that date, deletes or extends that date.

SEC. 29. Section 6415 is added to the Business and Professions Code, to read:

6415. A failure, by a person who engages in acts of an unlawful detainer assistant, to comply with any of the requirements of Section 6402 or 6408, or subdivision (a), (b), or (c) of Section 6411 is punishable as a misdemeanor punishable by a fine of not less than one thousand dollars ($1,000) or more than two thousand dollars ($2,000), as to each client with respect to whom a violation occurs, or imprisonment for not more than one year, or by both that fine and imprisonment. Payment of restitution to a client shall take precedence over payment of a fine.

This section shall become operative January 1, 2003, or the date the director suspends the requirements of this chapter applicable to legal document assistants pursuant to Section 6416, whichever first occurs.

SEC. 29.5. Section 6416 is added to the Business and Professions Code, to read:

6416. The director may conduct an audit of all counties to determine the number of legal document assistants registered pursuant to this chapter. The director may suspend the requirements of this chapter applicable to legal document assistants if the director finds that fewer than 200 legal document assistants have registered with all county clerks by December 31, 2000. Upon suspension of this chapter by the director, unlawful detainer assistants shall be subject to the remaining provisions of this chapter.

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. 30. 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.

CHAPTER 1080

An act relating to the Bipartisan Commission on the Political Reform Act of 1974.

[Approved by Governor September 30, 1998. Filed with Secretary of State September 30, 1998.]

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

SECTION 1. The Legislature finds and declares that the Political Reform Act of 1974, as set forth in Title 9 (commencing with Section 81000) of the Government Code, is an initiative measure adopted by the state's voters 24 years ago that was intended to restore public confidence in elected officials of state and local government. The Legislature further finds and declares that there is now a need to reassess the provisions of the Political Reform Act of 1974 to determine what its effects have been and whether changes would provide for a more efficient and effective implementation of that act. It is not the intent of the Legislature that the commission established by Section 2 of this act draft or propose additional campaign finance reform suggestions, but rather focus on administrative, regulatory, procedural, and clarifying changes to the Political Reform Act of 1974.

SEC. 2. The Bipartisan Commission on the Political Reform Act of 1974 is hereby established. "Commission," as used in this act, means and refers to the Bipartisan Commission on the Political Reform Act of 1974. The commission shall consist of 14 members, appointed as follows:

(a) Four members appointed by the Governor, two of whom shall be members of the Democratic Party and two of whom shall be members of the Republican Party. The Governor shall designate one

of these members to serve as chairperson of the commission. One of the members appointed by the Governor shall be a public member who is a representative of a nonprofit public interest organization.

(b) One member appointed by the President pro Tempore of the Senate.

(c) One member appointed by the Minority Floor Leader of the Senate.

(d) One member appointed by the Speaker of the Assembly.

(e) One member appointed by the Minority Floor Leader of the Assembly.

(f) Two members appointed by the Fair Political Practices Commission from among former chairpersons of that commission, one of whom shall be a member of the Democratic Party and one of whom shall be a member of the Republican Party. If, however, either of these appointments cannot be made because there is no qualified person willing to serve, then a former staff employee of the Fair Political Practices Commission may be appointed to serve in lieu of a former chairperson of the commission.

(g) Two members appointed by the Secretary of State, one of whom shall be a member of the Democratic Party and one of whom shall be a member of the Republican Party. One of the members appointed by the Secretary of State shall be a person who has been, but is not currently, registered as a lobbyist pursuant to the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(h) Two members appointed by the Attorney General, one of whom shall be a member of the Democratic Party and one of whom shall be a member of the Republican Party.

SEC. 3. (a) Current Members and employees of the Legislature and registered lobbyists shall be ineligible for membership on the commission.

(b) No more than three members of the commission may be attorneys at law who devote more than 10 percent of their professional practice time to legislative, political campaign, or other politically related activities.

SEC. 4. The commission shall conduct its initial meeting as soon as possible after January 1, 1999. The commission shall investigate and assess the effect of the Political Reform Act of 1974 on core political speech protected by the First Amendment to the United States Constitution, and on candidates for public office, campaign committees, the voters, state and local officials, and public employees, including the effect upon communications made or received by elected and other public officials to and from members of the public and lobbyists. The commission shall review any ballot measures affecting the Political Reform Act of 1974 and shall assess the impact of independent expenditure committees. The commission shall report its findings to the Legislature, together with

any recommendations to further the goals of the act, on or before October 1, 1999.

SEC. 5. Each member of the commission shall be entitled to per diem compensation in the amount of one hundred dollars ($100) for each day of attendance at a meeting of the commission.

SEC. 6. The commission may contract with individuals or organizations to provide research deemed necessary to achieve the purposes of the commission under this act.

SEC. 7. This act 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.

CONCURRENT AND JOINT RESOLUTIONS AND CONSTITUTIONAL AMENDMENTS

1997–98

REGULAR SESSION

1998 RESOLUTION CHAPTERS

RESOLUTION CHAPTER 1

Senate Joint Resolution No. 33—Relative to the Washington National Airport.

[Filed with Secretary of State January 20, 1998.]

WHEREAS, Legislation has been introduced in the United States House of Representatives (H.R. 2625) and the United States Senate (S. 1297) to rename the Washington National Airport as the "Ronald Reagan Washington National Airport"; and

WHEREAS, Ronald Reagan was elected Governor of the State of California in 1966 and reelected in 1970; and

WHEREAS, Subsequently, Ronald Reagan in 1980 was elected the 40th President of the United States and reelected in 1984; and

WHEREAS, During his administration, President Reagan signed into law legislation from Congress to stimulate economic growth, curb inflation, increase employment, and strengthen national defense; and

WHEREAS, Naming the travel gateway into the nation's capital after President Ronald Reagan is a fitting tribute to his legacy of prosperity and freedom; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California encourages the President and the Congress of the United States to enact legislation to rename the Washington National Airport as the "Ronald Reagan Washington National Airport"; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 2

Assembly Concurrent Resolution No. 83—Relative to National Eye Care Month.

[Filed with Secretary of State January 26, 1998.]

WHEREAS, The gift of eyesight is recognized as the most valuable of the senses; and

WHEREAS, Eye disease can occur at any age; and

WHEREAS, Many eye diseases do not cause symptoms until the disease has done damage; and

WHEREAS, Many eye problems can be prevented or corrected if properly diagnosed and treated in their early stages; and

WHEREAS, Eye injuries are a major cause of monocular blindness and visual impairment in the United States; and

WHEREAS, Ninety percent of all eye injuries can be prevented; and

WHEREAS, Most blindness is preventable if diagnosed and treated early by an ophthalmologist; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the month of January 1998 is hereby declared National Eye Care Month.

RESOLUTION CHAPTER 3

Assembly Concurrent Resolution No. 86—Relative to the anniversary of the Boy Scouts of America.

[Filed with Secretary of State February 13, 1998.]

WHEREAS, The Boy Scouts of America is an organization that helps boys through work and play to become better citizens; and

WHEREAS, The Boy Scouts of America has been in the forefront of instilling values and teaching service to God and country and duty to all human beings to its youth members since its founding on February 8, 1910; and

WHEREAS, This national youth movement, which has grown to more than 2,000,000 members, has made serving others through its values-based program its mission; and

WHEREAS, The Boy Scouts of America is a volunteer organization comprised of men and women who neither receive nor seek the thanks of the public; and

WHEREAS, These volunteers selflessly serve the young people in their community through the various organizations chartered by the Boy Scouts of America to use the program; and

WHEREAS, There are countless places of worship, schools and parent-teacher associations, service and fraternal clubs, and other community organizations that have been chartered throughout California by the Boy Scouts of America to use the scouting program; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California takes this opportunity to urge all Californians to observe the anniversary of the Boy Scouts of America on February 8, 1998, and to designate the week of February 8 through 14 as "Boy Scouts of America Week"; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the California headquarters of the Boy Scouts of America.

RESOLUTION CHAPTER 4

Senate Concurrent Resolution No. 61—Relative to College Awareness Month.

[Filed with Secretary of State February 18, 1998.]

WHEREAS, The California Education Round Table and its Intersegmental Coordinating Committee are sponsoring February 1998 as "College Awareness Month"; and

WHEREAS, California needs a college-educated work force in order for it to maintain a strong and vibrant economy, a cohesive society, and an effective democracy; and

WHEREAS, Students have to learn the skills, competencies, and behaviors that will enable them to have a variety of choices after high school graduation, including entering and succeeding in college; and

WHEREAS, California is disadvantaged when students leave high school before they graduate—a situation that happens too frequently—or graduate without the necessary skills to participate productively in the state's future; and

WHEREAS, Parents have important responsibilities in encouraging their daughters and sons to master the skills in elementary and secondary school that will prepare them to pursue a college education; and

WHEREAS, California's educational community will be conducting a statewide campaign during the month of February to provide parents with information in the appropriate language that will assist them in serving as academic advisers and financial planners for their daughters and sons so that they can graduate from college; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California hereby supports the actions of the California Education Round Table by proclaiming February 1998, as "College Awareness Month"; and be it further

Resolved, That the Legislature urges the residents of California to encourage elementary and secondary school students to succeed in their academic endeavors so that they may earn a college education and contribute to the economic, social, and political future of this state; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 5

Assembly Concurrent Resolution No. 14—Relative to the University of California Student Association.

[Filed with Secretary of State February 20, 1998.]

WHEREAS, Upon the occasion of its 25th anniversary, the University of California Student Association (UCSA) is deserving of special honor and commendations; and

WHEREAS, UCSA serves as the official student voice, representing the viewpoints of over 160,000 students attending the University of California; and

WHEREAS, UCSA has strived for the betterment of postsecondary education throughout California, and believes that students, as both the consumers and products of postsecondary education, have a right and obligation to share their unique perspective with educational policymakers; and

WHEREAS, Throughout the course of its existence, UCSA has provided the Legislature, the Board of Regents of the University of California, the University of California Office of the President, and the executive branch of state government critical information and student opinion regarding issues that directly affect postsecondary education in California; and

WHEREAS, UCSA has been instrumental in making significant reforms and improvements in higher education and has earned a national reputation as one of the most respected student associations in the country; and

WHEREAS, In recognition of UCSA's invaluable perspective in the area of postsecondary education policy, the Legislature grants the UCSA an open invitation to discuss its observations with Members of the Legislature; and

WHEREAS, The success of UCSA, in large part, has been due to the dedication, earnest effort, and persistence of its Student Board of Directors and their predecessors, who have served the organization since its inception, as well as its administrative directors, support staff, and numerous student interns; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Members of the Assembly and the Senate commend the significant accomplishments of the University of California Student Association as a contributor to the quality of education in California, and as an effective voice of the students; and be it further

Resolved, That the Members of the Legislature extend to the University of California Student Association a standing invitation to share its recommendations with the members on issues affecting postsecondary education; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the University of California Student Association.

RESOLUTION CHAPTER 6

Assembly Joint Resolution No. 44—Relative to Israel.

[Filed with Secretary of State February 20, 1998.]

WHEREAS, Israel is the only one of the 185 member nations of the United Nations that is ineligible to serve on the United Nations Security Council, the key deliberative group in the world body; and

WHEREAS, The United Nations Charter provides for "the equal rights ... of nations large and small," but Israel, a democratic nation and member of the United Nations since 1950, is denied the right to be elected as a temporary member of the security council, unlike any other member of the United Nations; and

WHEREAS, In order to be eligible for election to the security council, a country must belong to a regional group. Every member state, from the smallest to the largest, is included in one of the five regional groups. By geography, Israel should be part of the Asian bloc, but countries such as Iraq and Saudi Arabia have prevented its entry for decades; and

WHEREAS, As a temporary measure, Israel has sought acceptance in the West European and Others Group (WEOG), which includes not only the democracies of Western Europe but also Australia, Canada, New Zealand, Turkey, and the United States; but despite the support of several countries, including the United States, Israel still has not been admitted; and

WHEREAS, Without membership in a regional group, Israel can never be elected to serve a term on the security council or the other most important bodies of the United Nations system, such as the Economic and Social Council (ECOSOC), the World Court, UNICEF, and the Commission on Human Rights; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the United Nations West European and Others Group, particularly members of the European Union, to accept Israel as a temporary member; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Secretary-General of the United Nations, the

Representative of the Presidency of the European Union, and the Permanent Representative of the United States to the United Nations.

RESOLUTION CHAPTER 7

Assembly Concurrent Resolution No. 90—Relative to a Day of Remembrance.

[Filed with Secretary of State February 24, 1998.]

WHEREAS, President Franklin Delano Roosevelt signed Executive Order 9066 on February 19, 1942, pursuant to which 120,000 Japanese Americans and legal resident aliens were incarcerated in internment camps during World War II; and

WHEREAS, The alleged basis for incarceration was military necessity; and

WHEREAS, President Gerald Ford formally rescinded Executive Order 9066 on February 19, 1976; and

WHEREAS, Congress adopted legislation on July 21, 1980, which was signed by President Jimmy Carter on July 31, 1980, to establish the Commission on Wartime Relocation and Internment of Civilians (CWRIC) to investigate the claim that the incarceration of Japanese Americans and legal resident aliens during World War II was justified by military necessity; and

WHEREAS, The CWRIC held 20 days of hearings on this matter and heard from over 750 witnesses and published its findings in a report entitled "Personal Justice Denied"; and

WHEREAS, The CWRIC principal finding and conclusion was "the promulgation of Executive Order 9066 was not justified by military necessity, and the decision which followed from it—detention, ending detention, and ending exclusion—were not driven by analysis of military conditions. The broad historical causes which shaped these decisions were race prejudice, war hysteria, and a failure of political leadership"; and

WHEREAS, Congress adopted House Resolution 442, the Civil Liberties Act of 1988 (Public Law 100-383), which stated "for these fundamental violations of the basic civil liberties and constitutional rights of these individuals of Japanese ancestry, the Congress apologized on behalf of the Nation"; and

WHEREAS, President Ronald Reagan signed the Civil Liberties Act of 1988 into law on August 10, 1988, at which time he proclaimed, "This is a great day for America"; and

WHEREAS, The Civil Liberties Act of 1988 established the Civil Liberties Public Education Fund, the purpose of which is "to sponsor research and public educational activities and to publish and

distribute the hearings, findings, and recommendations of the CWRIC so that the events surrounding the exclusion, forced removal, and internment of civilians and permanent resident aliens of Japanese ancestry will be remembered, and so that the causes and circumstances of this and similar events may be illuminated and understood"; and

WHEREAS, The Civil Liberties Public Education Fund will sponsor a National Day of Remembrance on February 19, 1998, to reflect upon the effects of Executive Order 9066, the activities of the CWRIC, and the adoption of the Civil Liberties Act of 1988; and

WHEREAS, The purpose of the National Day of Remembrance is to educate the public about the lessons learned from the internment to ensure that it never happens again; and

WHEREAS, Organizations will sponsor related activities in various locations in California; and

WHEREAS, California's spotlight on its Day of Remembrance provides an opportunity for all people to reflect on and relate to other injustices that human beings have endured in our world's history; and

WHEREAS, February 19, 1998, will mark the 56-year anniversary of the date Executive Order 9066 was signed by President Franklin Delano Roosevelt; and

WHEREAS, 1998 also marks the 10th anniversary of the Civil Liberties Act of 1988; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California declares February 19, 1998, as a Day of Remembrance in this state in order to increase public awareness of the events surrounding the internment of Japanese Americans during World War II; and be it further

Resolved, That the Legislature encourages the annual observance of this day in future years; and be it further

Resolved, The Chief Clerk of the Assembly transmit copies of this resolution to the Governor of the State of California.

RESOLUTION CHAPTER 8

Assembly Concurrent Resolution No. 95—Relative to American Heart Month.

[Filed with Secretary of State February 26, 1998.]

WHEREAS, Turning routine tasks into physical activity will be the focus of several events nationwide during the month of February, which is annually designated as American Heart Month by the American Heart Association; and

WHEREAS, Despite the fact that lack of physical activity has been shown to be a major risk factor for heart attack, only 22 percent of American adults get enough exercise to achieve cardiovascular conditioning; and

WHEREAS, As many as 250,000 deaths a year in America, or about 12 percent of total deaths, are attributed to a lack of regular physical activity, according to the American Heart Association; and

WHEREAS, Physical activity keeps weight under control, helps prevent and manage high blood pressure, prevents bone loss, lowers stress, improves self-image, improves sleep, and counters depression; and

WHEREAS, During American Heart Month, thousands of American Heart Association volunteers across the country spend one to four weeks canvassing neighborhoods to raise funds and to provide educational information about heart disease and stroke; and

WHEREAS, All across America, activities during February will range from simple self-tests to couch potato relays, including participants calculating the number of calories they burn while walking up and down the store aisles, how to lift weights using common food items, and how to increase flexibility and strength while selecting food items; and

WHEREAS, The American Heart Association, which has more than four million volunteers and is the largest voluntary health organization fighting heart disease and stroke that annually kill more than 950,000 Americans, spent more than $251 million during the 1995–96 fiscal year for research support, public and professional education, and community programs; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature urges Californians to join the battle against heart disease and stroke and to join in during the activities in February; and be it further

Resolved, That February be designated American Heart Month.

RESOLUTION CHAPTER 9

Assembly Concurrent Resolution No. 85—Relative to the 100th anniversary of Philippine Independence.

[Filed with Secretary of State March 4, 1998.]

WHEREAS, Nineteen ninety-eight marks the 100th year of independence from Spanish rule by the Republic of the Philippines, and in recognition thereof, many Filipino communities in California and throughout the world will celebrate this historic event with appropriate festivities; and

WHEREAS, The Philippines' fight for independence from Spain parallels our nation's revolutionary goals of local government control and self-determination; and

WHEREAS, The significant events of Philippine history include the culmination of four centuries of struggle for nationhood, the outbreak of the Philippine Revolution in 1896, the declaration of Philippine Independence on June 12, 1898, and the ratification of a Philippine constitution by the 1898 Malolos Congress in January of 1899, and these events mark the Philippines as having the first constitutional democracy in Asia; and

WHEREAS, The centennial anniversary serves to inspire every individual of Filipino ancestry to have an enlightened awareness of the history of the Philippines and appreciation of the true Filipino identity; and

WHEREAS, Individuals of Filipino ancestry have been a vital part of our nation's history for 235 years, and today they are traditionally located in the Far West with large population concentrations in the rural and urban areas of the western states, including California; and

WHEREAS, Filipino-Americans have distinguished themselves in virtually every major area of endeavor including, but not limited to, finance and business, medicine and health services, education, sports, agriculture, government, labor, arts and media, law, and the military; and

WHEREAS, The famed Philippine Scouts, the Philippine Armed Forces Unit, and United States military forces gallantly fought together, side by side, during World War II in defense of the Philippines against the invading Japanese Imperial Forces, an army of overwhelming strength; and

WHEREAS, Filipino-Americans constitute the largest ethnic group among Asian/Pacific Islander Americans, and the centennial celebration of Philippine Independence from Spanish rule reminds the people of this state of the historical and cultural benefits that Californians have received and will continue to receive from the Filipino-American community; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby extends special congratulations to Filipino-American communities throughout California upon the occasion of the 100th anniversary of Philippine Independence from Spain, and conveys to these communities best wishes for continued success in the coming years; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 10

Assembly Concurrent Resolution No. 88—Relative to Long-Term Care Awareness.

[Filed with Secretary of State March 4, 1998.]

WHEREAS, It is anticipated that considerably more than half of all Californians over the age of 65 years eventually will need some type of long-term care. As the "baby boom" generation ages, the population of those over 65 years of age is projected to more than double in the next 20 years ballooning to an astounding 7.3 million by the year 2020; and

WHEREAS, While advances in medical technology have decreased the per capita disability rate, improved the general health status, and continue to add years to the average life expectancy of the aging population, the prodigious increase in absolute numbers portends an ever-increasing and insupportable demand on California's current long-term care system; and

WHEREAS, In addition to the aged, persons with disabilities and other specific conditions that leave them with functional limitations also are dependent on long-term care services. As the advance of medical science continues to increase the life expectancy of that population as well, California's long-term care system will be further overburdened; and

WHEREAS, Stated succinctly, the state is inadequately prepared to meet and accommodate the long-term care challenge, financial and otherwise, that looms immediately before the state. The urgent need to complete the development of a long-term care services infrastructure is becoming increasingly apparent; and

WHEREAS, California's long-term care system evolved in a patchwork manner that has left the state's present oversight structure too fragmented for effective coordination and integration of long-term care services. Moreover, this lack of coordination and integration creates gaps in the range of services and, unresponsive to consumer preferences, inappropriately limits consumer choice among available options for long-term care services; and

WHEREAS, During the calendar year of 1998, the California Health and Welfare Agency, in coordination with the California Department of Aging and the State Departments of Health Services, Social Services, Mental Health, and Developmental Services, as a first step toward the integration and streamlining of the state's long-term care services delivery system, is preparing a report on the long-term care programs administered by state departments in the agency; and

WHEREAS, The findings of Chapter 269 of the Statutes of 1997 declare that individuals requiring long-term care services most often are the best judges of their own needs. In accordance with those findings, the Health and Welfare Agency, in preparing its report,

shall seek input and comment from long-term care consumers and representatives of long-term care consumers across age, disability, or specific conditions who participate in the long-term care programs listed in the report; and

WHEREAS, Research, however, indicates that the majority of California families and caregivers are poorly informed regarding long-term care. This may be symptomatic of the lack of a strategic statewide plan on aging that, in addition to the integration and coordination of long-term care services promulgated by Chapter 269 of the Statutes of 1997, includes broader coordination of all other services designed for the aged and disabled, such as those services related to housing, transportation, and veterans; and

WHEREAS, A 1994 long-term care poll commissioned by the State Department of Health Services, using representative samplings of California adults, indicated the following:

(a) Californians significantly underestimate the risk of needing long-term care. Less than 25 percent of the respondents correctly estimated their lifetime risk of needing long-term care.

(b) Californians substantially underestimate the cost of long-term care services. Nearly 50 percent of the respondents underestimated the cost of one year in a nursing home.

(c) Californians mistakenly believe their health insurance coverage includes long-term care. Over 50 percent of the respondents with employer or union-sponsored health insurance mistakenly believed that they were covered for long-term care. Nearly 33 percent of respondents age 65 years and over believed that their federal Medicare coverage would pay for extended periods of long-term care.

(d) Californians have not given much thought to the need for long-term care coverage. When asked why they had not purchased insurance, the majority of the respondents, regardless of age, indicated that they just had not given much thought to the purchase of long-term care insurance; and

WHEREAS, The development of a well-designed long-term care system requires a partnership of well-informed and active participants with the consumer as important as all others in the partnership; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That henceforth, the month of May shall be designated as Long-Term Care Awareness Month; and be it further

Resolved, That 1998 shall be designated as The Year of Long-Term Care Awareness; and be it further

Resolved, That the Chief Clerk of the Assembly prepare and transmit copies of this resolution to the Governor of the State of California, the Secretary of the Health and Welfare Agency, and to

each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 11

Senate Joint Resolution No. 28—Relative to the inclusion of Poland, Hungary, and the Czech Republic as members of the North Atlantic Treaty Organization.

[Filed with Secretary of State March 4, 1998.]

WHEREAS, The Republic of Poland, the Republic of Hungary, and the Czech Republic are free, democratic, and independent nations with long and proud histories and cultures; and

WHEREAS, Their recently attained freedom was achieved following decades of struggle under the repressive yoke of brutal Communist regimes; and

WHEREAS, The North Atlantic Treaty Organization (NATO) is a defense alliance comprised of democratic states and is dedicated to the preservation and security of its member nations; and

WHEREAS, The Republic of Poland, the Republic of Hungary, and the Czech Republic desire to share in both the benefits and obligations of NATO in pursuing the development, growth, and promotion of democratic institutions and ensuring free market economic development; and

WHEREAS, Article 10 of the North Atlantic Treaty provides the opportunity for NATO to accept as new members those nations that will promote the high standards of the Alliance and will contribute to the strengthening of the North Atlantic region; and

WHEREAS, Poland's, Hungary's, and the Czech Republic's democratic governments and free market economies place them in full compliance with the membership criteria in accordance with Article 10 of the North Atlantic Treaty as well as the "Study on the Expansion of NATO"; and

WHEREAS, Poland's, Hungary's, and the Czech Republic's economies are the fastest growing and most robust of the eastern European nations, their economic ties to the United States overall, and in particular to California, have broadened significantly from year to year, and the 1990 United States Census indicates that well over 750,000 Californians claim Polish, Hungarian, or Czech ancestry; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California expresses its complete support for full inclusion of the Republic of Poland, the Republic of Hungary, and the Czech Republic into the North Atlantic Treaty Organization; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to take all actions necessary to support inclusion of the Republic of Poland, the Republic of Hungary, and the Czech Republic as full members of the North Atlantic Treaty Organization; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the United States Senate to promptly ratify the proposed amendment to the North Atlantic Treaty to include the Republic of Poland, the Republic of Hungary, and the Czech Republic as full members of the North Atlantic Treaty Organization; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Majority Leader of the United States Senate, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 12

Assembly Concurrent Resolution No. 104—Relative to Jewish veterans.

[Filed with Secretary of State March 17, 1998.]

WHEREAS, Servicemen and women of the Jewish faith have served proudly in every branch of the United States armed forces, receiving commendations and high honors; and

WHEREAS, History records that Jewish soldiers fought bravely and died heroically in every war in which this nation has participated; and

WHEREAS, Commencing with the Civil War, 15 Jewish servicemen have received the Congressional Medal of Honor, our nation's highest military award for bravery; and

WHEREAS, In 1998, the Jewish War Veterans of the United States of America will be celebrating its 102th anniversary as the nation's oldest, active national veterans' organization; and

WHEREAS, During the century of service to this country, the members of the Jewish War Veterans of the United States of America have dedicated themselves to promoting the welfare and special needs of all veterans, promoted Americanism and patriotism, combated anti-Semitism and racism wherever it has occurred, and advocated the doctrine of universal rights and eternal freedom for all Americans; and

WHEREAS, By instilling love of country, promoting awareness in community, honoring the memories of those who have made the

ultimate sacrifice in the defense of this nation, and tending the graves of the fallen, the Jewish War Veterans of the United States of America has helped create a better place in which to live; and

WHEREAS, This Legislature believes that it is fitting and proper to honor the contributions of the Jewish War Veterans of the United States of America for all that organization's worthwhile endeavors; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of March 10 to 16 of every year is proclaimed to be Jewish War Veterans of the United States of America Week; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 13

Senate Concurrent Resolution No. 66—Relative to the Week of the School Administrator.

[Filed with Secretary of State March 20, 1998.]

WHEREAS, Approximately 15,000 certificated and classified school administrators work in California's public schools; and

WHEREAS, Nearly 60 percent of these administrators are principals and vice principals providing direct support for the educational programs at schoolsites; and

WHEREAS, Research has determined that one of the main attributes of effective schools is the competent leadership of principals; and

WHEREAS, Other certificated and classified administrators provide leadership and support for the educational program by developing and implementing the curriculum, selecting textbooks and instructional materials, recruiting, training, and evaluating classified and certificated staff, managing the budget and monitoring cost controls, implementing school board policies and complying with federal, state, and local regulations and laws, planning and maintaining school facilities, and providing transportation, nutrition, and social service programs for pupils and their families; and

WHEREAS, Research shows that efficient district-level administration improves teacher effectiveness; and

WHEREAS, Research shows that public school administration in California has become increasingly efficient and effective, with fewer administrators managing more schools with more pupils than in the past; and

WHEREAS, A school's administrative team includes confidential employees who perform and assist in the performance of many critical functions; and

WHEREAS, School administrators and confidential employees ensure that effective and innovative classroom instruction is promoted in every area of California; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the week of March 1 through March 7, 1998, be proclaimed the Week of the School Administrator, in honor of the many outstanding contributions and services provided by the administrative teams in California's public school districts; and be it further

Resolved, That the administrators of California's public schools be commended for their support of, and contributions to, quality education in the state.

RESOLUTION CHAPTER 14

Assembly Concurrent Resolution No. 111—Relative to adult education.

[Filed with Secretary of State March 23, 1998.]

WHEREAS, Approximately 322 California adult schools serve the changing economic and cultural needs of a vigorous, expanding community; and

WHEREAS, Adult schools serve 1,508,286 California students; and

WHEREAS, Adult schools provide instruction to those in our state who need English as a second language and citizenship courses; and

WHEREAS, Adult schools are primary community resources for the teaching and instruction of adult family literacy; and

WHEREAS, Adult schools provide a way for adults to complete high school studies in their own time and at their own pace; and

WHEREAS, Adult schools provide programs especially designed for older adult and disabled populations; and

WHEREAS, Adult schools provide vocational and job training for adults seeking career changes or enhancements; and

WHEREAS, Adult schools provide instruction for parents, ranging from pre-birth classes through a wide spectrum of parent education courses; and

WHEREAS, Adult schools provide education services as called for by the Immigration Reform and Control Act, and for participants in the welfare-to-work activities of the CalWorks program; and

WHEREAS, Adult schools provide for the unique needs of individuals in a diverse population; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of March 16 through March 20, 1998, be proclaimed California Adult Education Week, in honor of the many outstanding services and contributions provided by California Adult Schools; and be it further

Resolved, That the administrators, teachers, classified staffs, and students of California's adult schools be commended for their support of, and contributions to, the quality of public education in the state.

RESOLUTION CHAPTER 15

Assembly Concurrent Resolution No. 115—Relative to Kidney Month.

[Filed with Secretary of State March 25, 1998.]

WHEREAS, More than 24,500 individuals in California have chronic kidney failure and require either dialysis treatment or a kidney transplant in order to live; and

WHEREAS, As of December 1997 more than 38,000 individuals were on the national waiting list for a kidney transplant, but only about 11,100 individuals actually received kidney transplants in 1997 due to a critical shortage of organ donors; and

WHEREAS, Kidney disease is the fifth leading cause of death in the United States; and

WHEREAS, The total number of individuals with chronic kidney failure in the United States is increasing annually by 6 to 7 percent; and

WHEREAS, The current annual cost of treating chronic kidney failure is $13 billion; and

WHEREAS, Less than one-third of the individuals between the ages of 18 and 55 years who receive dialysis treatment in California are employed or in school, resulting in a tragic loss of quality of life and productivity; and

WHEREAS, The two leading causes of kidney disease are diabetes and high blood pressure, conditions which in many cases can be prevented or effectively treated before they cause kidney disease; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature recognizes the month of March 1998 as Kidney Month, and encourages and promotes the prevention, treatment, and eventual cure of kidney disease and chronic kidney failure.

RESOLUTION CHAPTER 16

Senate Concurrent Resolution No. 62—Relative to Women's History Month.

[Filed with Secretary of State March 27, 1998.]

WHEREAS, American women of every race, class, and ethnicity have participated in the founding and building of our nation and have played a critical role in shaping the economic, cultural, and social fabric of our society, not in the least of ways through their participation in the labor force, working both inside and outside the home; and

WHEREAS, Women have been leaders in every movement for social change, including their own movement for suffrage, the fight for emancipation, the struggle to organize labor unions, and the civil rights movement; and

WHEREAS, In light of these efforts and the achievements of all American women, we take this opportunity to honor women and their contribution to the development of our society and our world; and

WHEREAS, The celebration of Women's History Month will provide an opportunity for schools and communities to focus attention on the historical role and accomplishments of the women of California and the United States, and for students, in particular, to benefit from an awareness of these contributions; and

WHEREAS, Women's History Month will include International Women's Day on March 8, originally proclaimed in 1910 to recognize and commemorate the valuable contributions women have made to the labor movement in improving working conditions and thus, bettering people's lives; and

WHEREAS, Women's History Month will be not only a call to acknowledge the outstanding American women whose names we know, but also a call to pay homage to the many women who have anonymously shaped our collective past; and

WHEREAS, The observance of Women's History Week was initiated by the Sonoma County Commission on the Status of Women in 1978, a celebration that evolved into Women's History Month, commemorated throughout the nation by schools, historians, and community groups; and

WHEREAS, The achievements of women who have gone before us will enable contemporary women and men to create tomorrow's history by working toward an end to physical and sexual violence against women, discrimination and harassment in employment, the relegation to poverty status of many women, and by advocating for the full participation of women in the economic and political arena, the provision of adequate child care, respect for those who choose

homemaking and motherhood as their career, and equal access to all of the opportunities this great nation has to offer; and

WHEREAS, The story of the women's rights movement deserves telling because of the significance and scope of women's role in making history and shaping the cultural and societal makeup of California and the United States, and because it is a rich part of our common heritage, a story of gallantry and devotion to the belief that the opportunity for complete human dignity should not be denied to one-half of the state and the nation; and

WHEREAS, The National Women's History Project has adopted "Living the Legacy of Women's Rights" as the 1998 theme for Women's History Month, inviting all Californians to see women's lives and accomplishments as an essential part of our national history, recognizing that history looks very different when the contributions, accomplishments, and perspectives of women are added to our shared legacy as Americans, thereby increasing our understanding of the world in which we live today and expanding our possibilities for the future; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California takes pleasure in joining the California Commission on the Status of Women, the Sonoma County Commission on the Status of Women, the Los Angeles County Commission for Women, and other city, county, and community commissions for women in California in honoring the contributions of women, and proclaims the month of March 1998 as Women's History Month; and be it further

Resolved, That the Legislature of the State of California urges all Californians to join in the celebration of International Women's Day on March 8, 1998; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Chair of the California Commission on the Status of Women, the Chair of the Sonoma County Commission on the Status of Women, and the National Women's History Project, for distribution to appropriate organizations.

RESOLUTION CHAPTER 17

Senate Joint Resolution No. 34—Relative to Arlington National Cemetery.

[Filed with Secretary of State March 27, 1998.]

WHEREAS, Arlington National Cemetery is a United States burial ground which was established in 1864; and

WHEREAS, Arlington National Cemetery consists of 420 acres in northeastern Virginia located on the Potomac River across from

Washington, D.C., and contains the remains of more than 240,000 former military service members and their spouses and children; and

WHEREAS, Those interred in the cemetery include representatives of the dead from all of America's wars, and many of these representatives achieved personal distinction, including, among others, President John F. Kennedy, General John J. Pershing, and Admiral Robert E. Peary; and

WHEREAS, In addition to those who have died on active duty, others who are eligible for burial in Arlington National Cemetery include, among others: holders of the nation's highest military decorations, including the Medal of Honor, Distinguished Service Cross, Navy Cross, Air Force Cross, Distinguished Service Medal, Silver Star, and Purple Heart; persons eligible for military retirement under specified conditions; veterans honorably discharged with at least a 30 percent disability before October 1, 1949; the spouse or unmarried child of any of the above persons or of any person already interred in the cemetery; and a veteran who is the parent, brother, sister, or child of an eligible person already interred in the cemetery; and

WHEREAS, Numerous civilians have been exempted from these normal eligibility rules; and

WHEREAS, These exempted persons include Supreme Court Justice Thurgood Marshall, a Drug Enforcement Administration agent killed during an assignment in Peru, and a Marine veteran killed in the line of duty as a District of Columbia police officer; and

WHEREAS, It is imperative that this hallowed burial ground be maintained for those currently eligible for interment there; and

WHEREAS, Exemptions to current burial criteria should be held to an absolute minimum and granted only with the exercise of extreme care and good judgment; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to take all necessary action in the future to ensure that the sacred military burial ground of Arlington National Cemetery is maintained for those currently eligible for burial there; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 18

Assembly Concurrent Resolution No. 89—Relative to National Boys and Girls Club Week.

[Filed with Secretary of State April 6, 1998.]

WHEREAS, The National Boys and Girls Clubs have more than 2,500,000 members; and

WHEREAS, In every child there is hidden talent just waiting to be discovered; and

WHEREAS, Boys and Girls Clubs provide the inspiration and the direction to nurture this talent, to help children develop self-esteem, to build lasting friendships, and to learn the valuable skills, values, and knowledge they need to become the productive and fulfilled citizens of tomorrow; and

WHEREAS, When time is taken to provide a young person with confidence, education, and opportunity for personal growth, an investment has been made in the future of America; and

WHEREAS, This investment has been made possible by the dedicated efforts of the thousands of volunteers, community leaders, and staff members of the more than 1,900 Boys and Girls Clubs across our nation; and

WHEREAS, Each one should be praised for its caring commitment and shining faith in America's boys and girls; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature designate April 19, 1998, through April 24, 1998, as National Boys and Girls Club Week; and be it further

Resolved, That the Legislature commend all those who work in the Boys and Girls Club and who put the needs of our children first because their work is, indeed, an inspiration to all who seek to improve our world; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 19

Assembly Concurrent Resolution No. 93—Relative to Scottish Tartan Day.

[Filed with Secretary of State April 6, 1998.]

WHEREAS, In 1641, the earliest recorded attempt to count and categorize the inhabitants of the English colonies in America revealed over 4,000 individuals of Scottish descent; and

WHEREAS, After the British Crown defeated Bonnie Prince Charlie's Scottish Highlanders at the Battle of Culloden in 1746, a second large wave of Scottish people arrived in the colonies, many to escape the widespread oppression suffered in their homeland; and

WHEREAS, The oppression of the Scots included the Dress Act of August 1747, suppressive legislation that forbade the wearing of kilts,

playing the bagpipe, or even displaying a swatch of tartan; and the breaking of this law called for six months in jail on the first offense and for the second offense, deportation to the colonies in America or Australia for seven years of indentured labor; and

WHEREAS, Although the Act of Repeal of 1782 permitted the Scots to wear tartan again, it was not until 1822, when King George IV became impressed with the poetry of Sir Walter Scott, that the display of the traditional Scottish regalia in public was fully accepted; and

WHEREAS, Between 1829 and 1930, more than 700,000 Scottish people immigrated to the United States and made it their new home, their descendents spreading across our great country so that now 1.2 million are living in California alone, more than in any other state, drawn by the glory of our mountains and meadows, our lakes and our streams, our valleys and coastal plains, reminiscent perhaps of the rugged beauty of their homeland; and

WHEREAS, Principal Scottish Highland Games are held each year in California in Pleasanton, Costa Mesa, San Diego, Fresno, and many other venues throughout the state, involving over 100 Scottish Clans and Societies, with a total audience in excess of 250,000, demonstrating widespread support and enthusiasm surrounding Scottish traditions and celebrations; and

WHEREAS, Individuals of Scottish birth and descent have distinguished themselves throughout history with their inventions, discoveries, and accomplishments, including Alexander Graham Bell, the inventor of the telephone; John Logie Baird, inventor of the television; Alexander Fleming, who discovered penicillin; James Hutton, the father of modern geology; John Paul Jones, early hero of the United States Navy; and John Muir, whose efforts enabled the nation the opportunity of appreciating the grandeur of Yosemite National Park; and

WHEREAS, The list of great and successful Scottish people and the contributions they have made to the world is so vast and impressive that Voltaire was prompted to write that "We look to Scotland for all our ideas of civilization"; and

WHEREAS, The Declaration of Arbroath, in 1320, set forth the Scottish peoples' commitment for freedom 400 years before our own Declaration of Independence, and those words still stir the hearts of people who would live free: "For so long as one hundred of us remain alive we will yield in no least way to the domination of the English. We fight not for glory nor for wealth nor for honors, but only and alone for freedom, which no good man surrenders but with his life"; and

WHEREAS, The United States Congress is on the threshold of declaring April 6 to be National Tartan Day, and California can seize the high ground with its sister state of Colorado and eastward roll a wave of confirmation; and

WHEREAS, It is appropriate that a day be set aside to acknowledge and celebrate the great contributions that Scottish people have made to this country and to the world; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California wishes to honor the great traditions and heritage of Scotland with a Scottish Tartan Day, which is hereby declared to be April 6, 1998, and every April 6th thereafter.

Be it further resolved, That in declaring Scottish Tartan Day, the Legislature recognizes and commemorates the many substantial contributions of the Scottish people to the world and pays tribute to the tartan, a symbol of Scottish courage in the face of adversity and loyalty to family and to friend, so that the human qualities of perseverance in a just cause and strength in their resolution that freedom is for the many, not the few, may serve as a continuing inspiration for all people today.

RESOLUTION CHAPTER 20

Assembly Concurrent Resolution No. 103—Relative to child abuse and neglect.

[Filed with Secretary of State April 6, 1998.]

WHEREAS, Child abuse and neglect continue to pose a serious threat to our nation's children; and

WHEREAS, In 1996, more than 3,000,000 children were reported to child protective agencies in the United States as having suffered abuse and neglect; and

WHEREAS, It is estimated that for every three dollars spent on child abuse and neglect, at least six dollars are saved that might be spent on child welfare services, special education services, medical care, foster care, counseling, and the housing of juvenile offenders; and

WHEREAS, Child abuse and neglect is a community problem and finding solutions depends on the involvement of people throughout the community; and

WHEREAS, The first organized statewide Blue Ribbon Campaign was originated in Norfolk, Virginia by the grandmother of Bubba Dickinson, a child who was murdered by his mother's abusive boyfriend; and

WHEREAS, In recent years, the National Committee to Prevent Child Abuse, the California chapter and other local affiliates, United States military bases, and other groups have organized Blue Ribbon Campaigns to increase public awareness of child abuse and to promote ways to prevent child abuse; and

WHEREAS, The National Committee to Prevent Child Abuse, in all its forms, has proclaimed April as National Child Abuse Prevention Month; and

WHEREAS, Blue ribbons are displayed to increase awareness of child abuse and as a strategy for Child Abuse Prevention Month; and

WHEREAS, This year's campaign is entitled "Nurturing Family Growth... Planting Seeds for Future Generations," which is designed to solicit the involvement of the whole community by encouraging the formation of partnerships to build a support network for families and children in every community; and

WHEREAS, The flexibility of this program offers numerous opportunities to be innovative and to create partnerships within business, professional, and community organizations; and

WHEREAS, The Assembly encourages the community to work together for youth-serving prevention programs; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature does hereby acknowledge the Child Abuse Prevention Month Blue Ribbon Campaign as a positive effort to promote public awareness of child abuse and its prevention; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 21

Assembly Concurrent Resolution No. 120—Relative to National Sleep Awareness Week.

[Filed with Secretary of State April 6, 1998.]

WHEREAS, Approximately 40 million Americans suffer from 80 identified sleep disorders, another 20 to 30 million Americans suffer intermittent sleep problems related to pain, stress, anxiety, depression, and ailments each year, and the overwhelming majority of sleep disorder sufferers remain undiagnosed and untreated; and

WHEREAS, Sleep-related disorders affect members of all races, socio-economic classes, and ages. Over 12 million Americans suffer from sleep apnea, a treatable condition that occurs mostly in middle-aged adults and may affect African-Americans more than whites. Sudden Infant Death Syndrome (SIDS) claims the lives of over 3,000 infants each year and is the major cause of death in babies between one month and one year of age. Restless Legs Syndrome, a neurological disorder, affects about 5 percent of the population over age 65 years; and

WHEREAS, Americans are chronically sleep-deprived. Over 63 million American adults suffer from moderate to severe levels of sleepiness. One in every two adults has trouble sleeping at one time or another—12 percent of all Americans suffer from frequent insomnia. Sleepiness affects vigilance, reaction times, alertness, mood, hand-eye coordination, and the accuracy of short-term memory; and

WHEREAS, Numerous studies have concluded that the general public, policymakers, and primary care physicians lack basic sleep knowledge, compromising the health and safety of all Americans. Half of the nation's business travelers suffer from insomnia and do not know how to combat the jet lag that affects their daytime performance. Medical students receive virtually no instruction in basic sleep science during their training; and

WHEREAS, Sleepiness, as a result of untreated disorders or sleep deprivation, has been identified as the cause of a growing number of on-the-job accidents. Over 25 million Americans have nontraditional work schedules that conflict with their biological clocks. An estimated 36 million Americans believe that sleeplessness negatively affects their performance at work. Fatigue was officially cited as a contributing factor in the Three Mile Island nuclear incident, the grounding of the Exxon Valdez in Prince William Sound, and the Challenger Space Shuttle disaster, among other industrial disasters; and

WHEREAS, The National Highway Traffic Safety Administration conservatively estimates that 100,000 motor vehicle crashes are caused by drowsy drivers each year. These crashes result in over 1,500 fatalities and 71,000 injuries. One-third of all Americans admit they have dozed off while driving. The National Transportation Safety Board estimates that 31 percent of all commercial driver fatalities and 58 percent of single-truck crashes are fatigue-related; and

WHEREAS, The economic impact of untreated sleep disorders and chronic sleepiness on society is devastating. Sleep deprivation is estimated to cost Americans over $100 billion annually in lost productivity, medical expenses, sick leave, and property and environmental damage; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature proclaims March 30, 1998 to April 5, 1998, as National Sleep Awareness Week in California and urges all Americans to recognize the dangers of untreated sleep disorders and the importance of proper sleep to their health, safety, and productivity; and be if further

Resolved, That the National Sleep Foundation and all of the following organizations join in making the proclamation:

(a) AAA Foundation for Traffic Safety.
(b) American Association of Motor Vehicle Administrators.
(c) American Drivers Training Safety Education Association.
(d) American Sleep Apnea Association.

(e) American Sleep Disorders Association.
(f) Cephalon, Inc.
(g) CNS, Inc.
(h) United States Department of Labor.
(i) McNeil Consumer Products.
(j) Narcolepsy Network, Inc.
(k) National Association of Governors' Highway Safety Representatives.
(*l*) National Heart, Lung, and Blood Institute, National Institutes of Health.
(m) National Center on Sleep Disorders Research, National Institutes of Health.
(n) National Institute of Nursing Research, National Institutes of Health.
(o) National Institute on Aging, National Institutes of Health.
(p) National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health.
(q) New York State Governor's Traffic Safety Committee.
(r) Parents Against Tired Truckers.
(s) Restless Legs Syndrome Foundation.
(t) Searle.
(u) Sleep Disorders Dental Society.
(v) Students Against Destructive Decisions.
(w) Wyeth-Ayerst.
(x) Young Americans with Narcolepsy.

RESOLUTION CHAPTER 22

Assembly Joint Resolution No. 47—Relative to the State of Israel.

[Filed with Secretary of State April 6, 1998.]

WHEREAS, The State of Israel was founded on the 19th century Zionist vision of Theodor Herzl and came into existence on May 14, 1948, as a homeland for Jewish people from all parts of the world; and

WHEREAS, For half a century, Israel has been one of America's closest allies and has served as a stable, democratic anchor in a turbulent region; and

WHEREAS, Israel has shared America's perspective in advancing democracy and free markets worldwide and in offering humane treatment to refugees fleeing religious persecution; and

WHEREAS, Israel has served as an invaluable ally against both unstable, anti-Western states and terrorists, and has worked well with America's military, sharing key technological advances; and

WHEREAS, The longstanding and close emotional ties between Israel and the United States have forged an unshakable cultural bond between the two nations; and

WHEREAS, With the launching of the Middle East peace process, the United States looks forward to continuing its uniquely intimate relationship with the State of Israel in a new context characterized by peace, stability, and prosperity; and

WHEREAS, Many Californians hold close personal ties to Israel and many more share the dream of a peaceful and prosperous Israel; and

WHEREAS, The State of Israel has been and continues to be a vital economic partner with this state in areas ranging from high technology to agriculture; and

WHEREAS, A year-long celebration of Israel's 50th anniversary, involving art exhibits, conferences, festivals, films, lectures, concerts, parties, religious services, and organized trips to Israel, has begun throughout the state; and

WHEREAS, When looking back upon the accomplishments of the State of Israel during its first 50 years, Americans should expect this special relationship with Israel to continue long into the foreseeable future; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California hereby acknowledges the 50th anniversary of independence for the State of Israel and looks forward to the celebration of the centurion in the Jewish calendar year 5808; and be it further

Resolved, That the Legislature hereby extends its heartiest congratulations to the State of Israel and the entire Jewish and pro-Israel community throughout California upon the occasion of Israel's 50th anniversary of its founding and reaffirms the link of common culture and values between the Israeli and American peoples; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 23

Assembly Joint Resolution No. 52—Relative to the Port Chicago disaster.

[Filed with Secretary of State April 6, 1998.]

WHEREAS, On the night of July 17, 1944, two transport vessels loading ammunition at the Port Chicago naval base on the Sacramento River in California were suddenly engulfed in a gigantic explosion, the incredible blast of which wrecked the naval base and heavily damaged the town of Port Chicago, located 1.5 miles away; and

WHEREAS, Everyone on the pier and aboard the two ships was killed instantly—some 320 American naval personnel, 200 of whom were Black enlisted men; and another 390 military and civilian personnel were injured, including 226 Black enlisted men; and

WHEREAS, The two ships and the large loading pier were totally annihilated and an estimated $12,000,000 in property damage was caused by the huge blast; and

WHEREAS, This single, stunning disaster accounted for nearly one-fifth of all Black naval casualties during the whole of World War II; and

WHEREAS, The specific cause of the explosion was never officially established by a Court of Inquiry, in effect clearing the officers-in-charge of any responsibility for the disaster and insofar as any human cause was invoked, laid the burden of blame on the shoulders of the Black enlisted men who died in the explosion; and

WHEREAS, Following the incident, many of the surviving Black sailors were transferred to nearby Camp Shoemaker where they remained until July 31, when two of the divisions were transferred to naval barracks in Vallejo near Mare Island; another division, which was also at Camp Shoemaker until July 31, returned to Port Chicago to help with the cleaning up and rebuilding of the base; and

WHEREAS, Many of these men were in a state of shock, troubled by the vivid memory of the horrible explosion; however, they were provided no psychiatric counseling or medical screening, except for those who were obviously physically injured; none of the men, even those who had been hospitalized with injuries, was granted survivor leaves to visit their families before being reassigned to regular duties; and none of these survivors was called to testify at the Court of Inquiry; and

WHEREAS, Captain Merrill T. Kline, Officer-in-Charge of Port Chicago, issued a statement praising the African American enlisted men and stating that "the men displayed creditable coolness and bravery under those emergency conditions"; and

WHEREAS, After the disaster, white sailors were given 30 days' leave to visit their families—according to survivors, this was the standard for soldiers involved in a disaster—while only African American sailors were ordered back to work the next day to clean and remove human remains; and

WHEREAS, After the disaster, the preparation of Mare Island for the arrival of African American sailors included moving the barracks of white sailors away from the loading area in order to be clear of the ships being loaded in case of another explosion; and

WHEREAS, The survivors and new personnel who later were ordered to return to loading ammunition expressed their opposition, citing the possibility of another explosion; the first confrontation occurred on August 9 when 328 men from three divisions were ordered out to the loading pier; the great majority of the men balked, and eventually 258 were arrested and confined for three days on a large barge tiered to the pier; and

WHEREAS, Fifty of these men were selected as the ring-leaders and charged with mutiny, and on October 24, 1944, after only 80 minutes of a military court, all 50 men were found guilty of mutiny—10 were sentenced to 15 years in prison, 24 sentenced to 12 years, 11 sentenced to 10 years, and five sentenced to eight years; and all were to be dishonorably discharged from the Navy; and

WHEREAS, After a massive outcry the next year, in January 1946, 47 of the Port Chicago men were released from prison and "exiled" for one year overseas before returning to their families; and

WHEREAS, In a 1994 investigation, the United States Navy stated that "there is no doubt that racial prejudice was responsible for the posting of only African American enlisted personnel to loading divisions at Port Chicago"; and

WHEREAS, In the 1994 investigation, the United States Navy, prompted by Members of Congress, admitted that the routine assignment of only African American enlisted personnel to manual labor was clearly motivated by race; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress and the President of the United States to act to vindicate the sailors unjustly blamed for, and the sailors convicted of mutiny following, the Port Chicago disaster, and to rectify any mistreatment by the military of those sailors; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, and each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 24

Senate Concurrent Resolution No. 76—Relative to POW Recognition Day.

[Filed with Secretary of State April 7, 1998.]

WHEREAS, Men and women have long answered our nation's call to duty and undertaken their mission as members of the United States Armed Forces; and

WHEREAS, Our military personnel have gone to battle in countries near and far to defend the ramparts of liberty and resist the agents of tyranny; and

WHEREAS, Hostile forces throughout the world continue to subvert the political and economic freedom for which American soldiers have sacrificed their lives; and

WHEREAS, Many of our soldiers have returned home as heroes and proud veterans but, tragically, many others still remain unaccounted for and missing; and

WHEREAS, There were some 142,257 Americans captured and interned under deplorable conditions during World War I, World War II, the Korean Conflict, the Vietnam Conflict, the Persian Gulf War, and the Somalian Conflict, and there are more than 92,457 other Americans who were lost either in combat or as MIA's, and their remains were never recovered; and

WHEREAS, Each year, citizens throughout America join in observances to honor and recognize former American prisoners of war, particularly the American Ex-Prisoners of War, Department of California, and to remember those individuals still unaccounted for, so that we may rededicate ourselves to finding a resolution to their status that will allow their families to have the peace they deserve; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby designates April 9, 1998, as POW Recognition Day in California; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 25

Senate Joint Resolution No. 31—Relative to a State Veterans Cemetery in northern California.

[Filed with Secretary of State April 7, 1998.]

WHEREAS, California is home to more than three million veterans, which represents the largest single state population of veterans in this country; and

WHEREAS, There are only two National Cemeteries available in California when a veteran is deceased, one located in Riverside and the other in Gustine, California; and

WHEREAS, The United States Department of Veterans Affairs has proposed 100 percent funding for the design, construction, and initial equipping of a State Veterans Cemetery which would be under the control of a state agency; and

WHEREAS, This action should not supersede the responsibility of the United States Department of Veterans Affairs to fund the construction and operation of planned national veterans cemeteries; and

WHEREAS, The California Legislature supports the establishment of a State Veterans Cemetery and has prepared studies reflecting this need in northern California; and

WHEREAS, The State of California strongly supports the need for federal assistance and financial support for the establishment and development of state veterans cemeteries and continuing financial assistance to operate these veterans cemeteries; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That in keeping with President Lincoln's comments concerning federal support for "Those who shall have borne the battle and his widow and orphans," the President of the United States, the Congress, and the United States Department of Veterans Affairs are hereby petitioned to propose funding for the construction and operation of a State Veterans Cemetery in northern California; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Secretary of the United States Department of Veterans Affairs.

RESOLUTION CHAPTER 26

Assembly Concurrent Resolution No. 66—Relative to the John Wilkie Safety Roadside Rest Area.

[Filed with Secretary of State April 16, 1998.]

WHEREAS, In John Wilkie's outstanding 27-year career with the Department of Transportation (Caltrans), he rose from a Caltrans equipment operator to a highway maintenance superintendent; and

WHEREAS, John Wilkie's experience and expertise in many areas resulted in his participation on numerous statewide committees dealing with highway issues; and

WHEREAS, In continuing his commitment to providing quality services for the traveling public, John Wilkie was an active participant in developing a statewide collaborative program to provide employment opportunities for persons with disabilities throughout the statewide roadside rest system of Caltrans; and

WHEREAS, John Wilkie's statewide leadership role was the foundation for the development of an interdepartmental task force consisting of Caltrans, the state Department of Mental Health, and the Department of Rehabilitation; and

WHEREAS, Using "roads as bridges to employment," the task force successfully increased statewide employment opportunities for persons with disabilities by facilitating, activating, and empowering local communities to coordinate and maximize their resources; and

WHEREAS, Due to John Wilkie's statewide leadership role, Caltrans received a special employer's award for its outstanding contribution to increasing employment opportunities for this state's disabled population that was presented at the 1992 Employment Partnership Conference of Consumers, Employers, and Service Providers, sponsored by the state Department of Mental Health and the Department of Rehabilitation; and

WHEREAS, Through John Wilkie's continuing statewide contribution to creating employment opportunities within the Caltrans system, Caltrans received in 1994 a Public Employer of the Year Award from the Governor's Committee for Employment of Disabled Persons; and

WHEREAS, With John Wilkie representing Caltrans, California's Building the Employment Services Team (BEST) Networks were developed statewide to address and meet employee, employer, and community needs; and

WHEREAS, Those statewide community focus groups share the common mission of supporting collaborative employment services for persons with disabilities; and

WHEREAS, The commitment of Caltrans to participating in the development of statewide employment opportunities for persons with disabilities was demonstrated by its designation of John Wilkie as a department representative when he was the Needles Highway Maintenance Superintendent and later as a retired annuitant; and

WHEREAS, Dedicating a safety roadside rest area to John Wilkie recognizes where his journey began in developing employment opportunities for disabled people in this state to provide quality services to the traveling public; and

WHEREAS, The Fenner Safety Roadside Rest Area is maintained by the Needles TEAM, a specialized employment program initiated by John Wilkie for those residents of Needles who have difficulty obtaining and maintaining employment; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate concurring, That the Fenner Safety Roadside Rest Area on Interstate Highway Route 40 is hereby redesignated the John Wilkie Safety Roadside Rest Area at Fenner ; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with signing requirements for the state highway system, showing the special designation and, upon receiving donations from nonstate

sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of the resolution to the Director of Transportation.

RESOLUTION CHAPTER 27

Assembly Concurrent Resolution No. 80—Relative to commending state chaplains.

[Filed with Secretary of State April 23, 1998.]

WHEREAS, The First Amendment of the United States Constitution guarantees the exercise of religious freedom; and

WHEREAS, The California Constitution also guarantees the exercise of religious freedom without discrimination or preference; and

WHEREAS, Recent United States Supreme Court decisions have affirmed the right of institutionalized persons to practice the religion of their choice; and

WHEREAS, Inmates, patients, and wards within state institutions, due to the nature of their confinement, present a unique challenge to those who undertake ministry in an effort to satisfy their residents' constitutional guarantee to freely exercise the religion of their choice; and

WHEREAS, Chaplains are the spiritual advisers for those who live and work within the closed sociological system of inmates, patients, wards, and institutional staff; and

WHEREAS, Chaplains must be fully qualified and endorsed by their faith in order to be considered an imam, minister, priest, rabbi, or spiritual leader in the institutional setting; and

WHEREAS, A chaplain must demonstrate a strong, intellectual, moral, and spiritual character; and

WHEREAS, Chaplains have specialized training in relating to the religious needs of inmates, patients, or wards who often have complex physical or mental disorders, or developmental, moral, or character impairments; and

WHEREAS, Anger, grief, confusion, suffering, and ignorance is a common reality among the inmates, patients, and wards in our institutions; and

WHEREAS, Suicide, homicide, and drugs have taken many lives among inmates, wards, and residents in the institutional setting; and

WHEREAS, Chaplains through spiritual counseling, crisis management, and practical advice offer encouragement and assistance in dealing with these problems; and

WHEREAS, Inmates, patients, or wards have a permanent and continuous need for an available competent and trusted chaplain to turn to in time of need, which cannot be met by a part-time, unknown volunteer brought in to serve the institutional population on an intermittent basis; and

WHEREAS, Experts have found religion is often a crucial part of effective treatment; and

WHEREAS, The Columbia University Center for Addiction and Substance Abuse has found the best predictor and motivational factor for recovery is whether a person practices a religion; and

WHEREAS, Since 1957, the State of California has seen fit to employ on a full-time basis chaplains reflecting a variety and diversity of faith groups represented throughout our great State of California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby commends the 40 years of work and effort by California state chaplains who labor faithfully within the Department of Corrections, the California Youth Authority, the State Department of Developmental Services, the State Department of Mental Health, and the Department of Veteran's Affairs; and be it further

Resolved, That the professional association created in 1967 called the Associated Chaplains in California State Service (ACCSS) also is commended for its continued efforts over the last 30 years to bring the various faith communities together in a common purpose to maintain and upgrade the professional chaplaincy, to help their brothers and sisters, and to assist the state departments in their various missions to effect rehabilitation, guidance, and service to those entrusted to their care; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 28

Assembly Concurrent Resolution No. 127—Relative to Ovarian Cancer Awareness Month.

[Filed with Secretary of State April 23, 1998.]

WHEREAS, Ovarian cancer ranks second among gynecological cancers in the number of new cases each year, and causes more deaths than any other cancer of the female reproductive system; and

WHEREAS, During 1998, it is estimated that 26,800 new cases of ovarian cancer will develop in the United States and that ovarian cancer will cause approximately 14,200 deaths; and

WHEREAS, Approximately 78 percent of ovarian cancer patients survive longer than one year after diagnosis and more than 46 percent of these patients survive longer than five years after diagnosis; and

WHEREAS, If diagnosed and treated before the cancer spreads outside of the ovary, the five-year survival rate is 92 percent; however, only approximately 24 percent of all cases of ovarian cancer are detected at that stage; and

WHEREAS, Much more public education and awareness is needed about ovarian cancer; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature recognizes April 1998 as Ovarian Cancer Awareness Month in the State of California, and encourages the people of the state to take this opportunity to increase their awareness of this disease and educate themselves to ways of early detection; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 29

Assembly Concurrent Resolution No. 138—Relative to Armenian Genocide Remembrance Day.

[Filed with Secretary of State April 23, 1998.]

WHEREAS, Armenians living in their 3,000 year historic homeland in Asia Minor were subjected to severe persecution and brutal injustice by the Turkish rulers of the Ottoman Empire before and after the turn of the 20th century, including widespread acts of destruction and murder during the period from 1894–1896 and again in 1909; and

WHEREAS, The horrible experience of the Armenians at the hands of their Turkish oppressors culminated with what is known by historians as the First Genocide of the Twentieth Century, or the "Forgotten Genocide"; and

WHEREAS, The Armenian Genocide began with the murder of hundreds of Armenian intellectuals, and political, religious, and business leaders who were arrested and taken from their homes in Constantinople before dawn on April 24, 1915; and

WHEREAS, The Young Turk regime then in control of the empire planned and executed the unspeakable atrocities committed against the Armenians from 1915 through 1923, that included the torture, starvation, and murder of 1,500,000 Armenians, death marches into the Syrian desert, and the exile of more than 500,000 innocent people; and

WHEREAS, While there were some Turks who jeopardized their safety in order to protect Armenians from the slaughter being perpetrated by the Young Turk regime, the massacres of the Armenians constituted one of the most atrocious violations of human rights in the history of the world; and

WHEREAS, The United States Ambassador to the Ottoman Empire, Henry Morgenthau, Sr., stated: "Whatever crimes the most perverted instincts of the human mind can devise, and whatever refinements of persecutions and injustice the most debased imagination can conceive, became the daily misfortunes of this devoted people. I am confident that the whole history of the human race contains no such horrible episode as this. The great massacres and persecutions of the past seem almost insignificant when compared to the sufferings of the Armenian race in 1915. The killing of the Armenian people was accompanied by the systematic destruction of churches, schools, libraries, treasures of art and cultural monuments, in an attempt to eliminate all traces of a noble civilization with a history of more than three thousand years"; and

WHEREAS, Contemporary newspapers like the New York Times commonly carried headlines such as the following: "Tales of Armenian Horrors Confirmed," "Million Armenians Killed or in Exile," "Wholesale Massacre of Armenians by Turks"; and

WHEREAS, Adolph Hitler, in persuading his army commanders that the merciless persecution and killing of Jews, Poles, and other peoples would bring no retribution, declared, "Who, after all, speaks today of the annihilation of the Armenians"; and

WHEREAS, Unlike other peoples and governments that have admitted the abuses and crimes of predecessor regimes, and despite the overwhelming weight of evidence, the Republic of Turkey has denied the occurrence of the crimes against humanity committed by the Young Turk rulers, and those denials compound the grief of the few remaining survivors of the atrocities and desecrate the memory of the victims; and

WHEREAS, There are concerted efforts to revise history through the dissemination of propaganda suggesting that Armenians were responsible for their fate in the period from 1915 through 1923 and by funding of programs at American educational institutions for the purpose of furthering the cause of such revisionism and to counter, in the words of a Turkish official, "the Armenian view"; and

WHEREAS, The accelerated level and scope of denial and revisionism, coupled with the passage of time and the fact that very few survivors remain who serve as reminders of indescribable brutality and tormented lives, compel a sense of urgency in efforts to solidify recognition of historical truth; and

WHEREAS, By consistently remembering and forcefully condemning the atrocities committed against the Armenians and honoring the survivors, as well as other victims of similar heinous conduct, we guard against repetition of such acts of genocide; and

WHEREAS, California is home to the largest population of Armenians in the United States, and those citizens have enriched our state through leadership in the fields of academia, medicine, business, agriculture, government, and the arts, and are proud and patriotic practitioners of American citizenship; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby designates April 24, 1998, as the "California Day of Remembrance of the Armenian Genocide of 1915–23"; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor and to Armenian churches and commemorative organizations.

RESOLUTION CHAPTER 30

Assembly Concurrent Resolution No. 60—Relative to the George R. Volland Memorial Bridge.

[Filed with Secretary of State April 27, 1998.]

WHEREAS, George R. Volland served his country in the United States Navy with honor and distinction in a career that spanned 22 years, achieving the rank of Master Chief; and

WHEREAS, Sailing from ports in this state, George R. Volland journeyed to the Pacific, Atlantic, and Indian Oceans, the Mediterranean Sea, the Suez and Panama Canals, and untold ports of call, to ensure the security and integrity of the United States and its citizens; and

WHEREAS, During all his journeys, George R. Volland always looked forward to the day when he would return to his beloved California and the 32nd Street Naval Station at San Diego, home of the Pacific Surface Fleet of the United States Navy; and

WHEREAS, Over his distinguished career, which included service in World War II, and the wars in Korea and Vietnam, George R. Volland named as his home many of the port cities of this state, including Imperial Beach, National City, Chula Vista, San Diego, Long Beach, San Francisco, Richmond, Antioch, and Stockton; and

WHEREAS, On June 23, 1976, George R. Volland made a last untimely sacrifice, his life; and

WHEREAS, He died in the aftermath of a massive heart attack, sustained in May 1976, while attending to the junior high school and high school student victims of a terrible bus accident in Martinez, in which 17 were killed and more than 23 others were injured; and

WHEREAS, George R. Volland was a leader, hero, sailor, husband, father, and friend; and

WHEREAS, He is survived by his widow, Mrs. Genevieve Volland, daughter Roberta Kostenbader, sons Donald and John Volland, and grandsons Robert and Shawn; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate concurring, That the Highway 54 overpass over Interstate Highway Route 5 in San Diego is hereby officially designated the George R. Volland Memorial Bridge; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with signing requirements for the state highway system, showing the special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of the resolution to the Director of Transportation.

RESOLUTION CHAPTER 31

Assembly Concurrent Resolution No. 114—Relative to Big Brothers Big Sisters Appreciation Week.

[Filed with Secretary of State April 27, 1998.]

WHEREAS, Big Brothers Big Sisters is a national youth service organization that provides positive youth development based primarily on one-to-one relationships between adult volunteer mentors and children at risk from single-parent homes; and

WHEREAS, The volunteers serve as role models and help the young people increase their self-confidence, reach their highest potential, and to see themselves, often for the first time, as having happy and successful futures; and

WHEREAS, For more than 90 years, Big Brothers Big Sisters has been the preeminent youth-serving organization and has influenced the lives of millions of children in thousands of communities across America through its more than 500 Big Brothers Big Sisters agencies that "match" volunteers to the child, based on the child's specific needs and common interests; and

WHEREAS, As a Big Brother or Big Sister becomes a friend, confidant, and a mentor, the relationship provides the youth with an increased sense of belonging that frequently leads to enhanced communication skills and improved performance at home, at school, and in the community; and

WHEREAS, The success of this organization, which states that its work "is as elementary as putting a friend in a child's life and as essential as putting hope into a child's future," goes without question since 46 percent of the Big Brothers Big Sisters' youngsters are less

likely to start using drugs and 27 percent are less likely to start drinking as their peers; 52 percent are less likely to skip a day of school and 37 percent are less likely to skip a class; and

WHEREAS, Not every child from a single-parent home needs a Big Brother or Big Sister, but when a caring adult is needed and requested, Big Brothers Big Sisters can provide friendship and support, and can be role models so vitally important to children at risk of failing in school, or of engaging in harmful behavior, and these volunteers can put hope into those children's future; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the week of April 19 to April 25, 1998, inclusive, as Big Brothers Big Sisters Appreciation Week in California and urges all Californians to pay homage to this fine organization that has done so much to make a positive difference in the lives of so many troubled young people in our society; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 32

Assembly Concurrent Resolution No. 131—Relative to Tourette Syndrome Awareness Month.

[Filed with Secretary of State April 27, 1998.]

WHEREAS, Tourette Syndrome is a neurological disorder characterized by tics, which are involuntary, rapid, sudden movements or vocalizations that occur repeatedly in the same way; and

WHEREAS, The symptoms include (1) both multiple motor and one or more vocal tics present at some time during the illness although not necessarily simultaneously, (2) the occurrence of tics many times a day, usually in bouts nearly every day or intermittently throughout a span of more than one year, (3) periodic changes in the number, frequency, type, and location of the tics, and in the waxing and waning of their severity, (4) symptoms that sometimes disappear for weeks or months at a time, and (5) onset before the age of 18; and

WHEREAS, There are two categories of tics: motor and vocal. Both of these are then subdivided into simple and complex; and

WHEREAS, Simple motor tics include eye blinking, head jerking, shoulder shrugging, and facial grimacing, and simple vocal tics include throat clearing, yelping and other noises, sniffing, and tongue clicking; and

WHEREAS, Complex motor tics include jumping, touching other people or things, smelling, twirling about, and only rarely self-injurious actions including hitting or biting oneself, and complex vocal tics include uttering words or phrases out of context and coprolalia, which is vocalizing socially unacceptable words; and

WHEREAS, The range of tics is very broad. Some symptoms are often so complex that family members, friends, teachers, and employers may find it hard to believe that the movements and vocalizations are involuntary; and

WHEREAS, It is important to receive a Tourette Syndrome diagnosis early in life, especially in those instances when the symptoms are viewed by some people as bizarre, disruptive, and frightening. Sometimes Tourette Syndrome symptoms provoke ridicule and rejection by peers, neighbors, teachers, and even casual observers. Parents may be overwhelmed by the strangeness of their child's behavior. The child may be threatened, excluded form activities and prevented from enjoying normal interpersonal relationships. These difficulties may become greater during adolescence, an especially trying period for young people and even more so for a person coping with a neurological problem; and

WHEREAS, To avoid psychological harm, early diagnosis and treatment are crucial. Moreover, in more serious cases, it is possible to control the symptoms with medication; and

WHEREAS, Many people experience marked improvement in their late teens or early twenties. Most people with Tourette Syndrome get better, not worse, as they mature, and those diagnosed with Tourette Syndrome have a normal life span. As many as $^1/_3$ of patients experience remission of tic symptoms in adulthood; and

WHEREAS, Since many people with Tourette Syndrome have yet to be diagnosed, there are no absolute figures as to how many people suffer from Tourette Syndrome in the United States. The official estimate by the National Institutes of Health is that 100,000 Americans have fully developed Tourette Syndrome. Some genetic studies suggest that the figure may be as high as one in two hundred if those with chronic multiple tics or transient childhood tics are included in the count; now, therefore be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature does hereby proclaim April 1998 as Tourette Syndrome Awareness Month.

RESOLUTION CHAPTER 33

Assembly Concurrent Resolution No. 136—Relative to California Holocaust Memorial Week.

[Filed with Secretary of State April 27, 1998.]

WHEREAS, More than 50 years have passed since the tragic events we now call the Holocaust transpired, in which the dictatorship of Nazi Germany murdered six million Jews as part of a systematic program of genocide known as "The Final Solution of the Jewish Question"; and

WHEREAS, The Holocaust was a tragedy of proportions the world had never witnessed; and

WHEREAS, Five million others were also murdered by the Nazis; and

WHEREAS, We must be reminded of the reality of the Holocaust's horrors so they will never be repeated; and

WHEREAS, Each person in California should set aside moments of his or her time every year to give remembrance to those who lost their lives in the Holocaust; and

WHEREAS, The United States Holocaust Memorial Council has designated the week of April 19 through April 25, 1998, as Holocaust Memorial Week-Days of Remembrance for Victims of the Holocaust; and

WHEREAS, April 22, 1998, is Yom HaSho'ah, and has been designated internationally as a day of remembrance for victims of the Holocaust; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of April 19 through April 25, 1998, be proclaimed as California Holocaust Memorial Week, and that Californians are urged to observe these days of remembrance for victims of the Holocaust in an appropriate manner; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 34

Senate Concurrent Resolution No. 83—Relative to Teenage Pregnancy Prevention Month.

[Filed with Secretary of State April 28, 1998.]

WHEREAS, There is a need to emphasize the importance of a strong partnership between the community and the family in helping young people maximize their potential and avoid life compromising behaviors; and

WHEREAS, The State of California is committed to involving businesses, media, temples, mosques, churches, synagogues, and other religious institutions, parents, educational institutions, policymakers, agencies, and health care providers in helping to prevent teenage pregnancy; and

WHEREAS, Teenage pregnancy has been linked with other service issues facing our community, including crime, poverty, child abuse, infant mortality, unemployment, substance abuse, and violence; and

WHEREAS, Teenage pregnancy significantly affects the health, economic, and educational future of teenagers; and

WHEREAS, Teenage pregnancy has especially devastating consequences for unmarried schoolaged mothers; and

WHEREAS, Teenage pregnancy and parenthood is a significant factor in school dropouts among females and males and their long-term welfare dependency, adding over $1 billion annually to taxpayers' costs; and

WHEREAS, The California teenage pregnancy rate is one-third higher than the nation's average and is, in fact, the highest in the United States; and

WHEREAS, California's teenage pregnancy prevention programs and awareness campaigns have been a significant factor in reducing the birthrate among teenagers, which has experienced a 15-percent drop since 1991 and is dropping at a rate that is 3 percent faster than the national average; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the state proclaims May 1998 as Teenage Pregnancy Prevention Month; and be it further

Resolved, That the Legislature encourages people in all communities to participate in appropriate ceremonies and activities during Teenage Pregnancy Prevention Month.

RESOLUTION CHAPTER 35

Senate Joint Resolution No. 32—Relative to veterans.

[Filed with Secretary of State May 1, 1998.]

WHEREAS, Tobacco companies have regularly distributed cigarettes free of charge to military personnel and provided cigarettes for inclusion in daily food rations; and

WHEREAS, Tobacco products have been provided at significantly reduced prices in military commissaries, exchanges, and ship stores; and

WHEREAS, The Veterans' Affairs Committee of the United States House of Representatives has received testimony that the United States Armed Forces fostered not only a permissive attitude toward smoking among military troops, but actually encouraged them to smoke; and

WHEREAS, Smoking rates among military personnel have historically been considerably higher than among civilians; and

WHEREAS, Smoking rates in the military exceed the national average by close to 20 percent, especially among enlisted men; and

WHEREAS, More than 53 percent of adult males and 51.7 percent of adult females in the military smoke; and

WHEREAS, Evidence has emerged indicating knowledge on the part of tobacco manufacturers of the addictive nature of nicotine found in tobacco products; and

WHEREAS, Legislation currently pending in Congress seeks to implement a comprehensive national strategy to reduce smoking among teenagers and to address the financial costs of treating persons with smoking-related illnesses; and

WHEREAS, Under this proposed legislation, the tobacco industry will pay over $5 billion into a national trust fund, print more explicit warnings on cigarette packages, eliminate outdoor advertising, and pay significant penalties if smoking rates among youth are not reduced; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature memorializes the Congress of the United States to include, as part of current legislation regulating the tobacco industry, a diversion of sufficient funds to the United States Department of Veterans Affairs for the costs of compensation paid to veterans who suffer as a result of the smoking addiction they acquired when they were in the United States Armed Forces; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the United States Congress and the President of the United States.

RESOLUTION CHAPTER 36

Senate Joint Resolution No. 42—Relative to organic food.

[Filed with Secretary of State May 1, 1998.]

WHEREAS, Congress passed the Organic Foods Production Act of 1990 (7 U.S.C.A. Sec. 6501 and following) to establish national standards for organic farming; and

WHEREAS, Congress established the National Organic Standards Board to advise the United States Department of Agriculture in developing regulations to implement the Organic Foods Production Act of 1990; and

WHEREAS, The National Organic Standards Board made specific recommendations concerning the production, processing, labeling, and certification of organic foods, which were drawn largely from California's successful organic standards; and

WHEREAS, The United States Department of Agriculture proposed regulations that differ significantly from those recommended by the National Organic Standards Board; and

WHEREAS, The proposed regulations constitute a significant dilution of the definition of "organic" as established under the California Organic Foods Act of 1990 (Art. 7 (commencing with Section 110810), Ch. 5, Pt. 5, Div. 104, H.& S.C.); and

WHEREAS, California, which produces safe, abundant, traditionally-grown food supplies, in addition to organic food, has had a long tradition of strict guidelines for organic production and a consistent standard of what "organic" means to the consumer; and

WHEREAS, Currently, when consumers buy a product that meets California's stringent organic standards, they know they are purchasing something of high quality; and

WHEREAS, The proposed federal regulations substantially depart from California's approach in that, for example, the final rules may permit the use of municipal sewer sludge, irradiation, and bioengineering in organic production, they may permit the use of pesticides and other material in organic farming that have not been allowed previously, and they permit excessive confinement of animals, and only 80 percent of the feed for animals must be organic; and

WHEREAS, The proposed federal regulations are far weaker than those established in California and, if adopted, would threaten the integrity of the organic process in our state, undermine established practices of the organic industry, and destroy consumer confidence in the organic label; and

WHEREAS, Organic farmers have successfully developed an economically viable market under the strict California standards; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That California urges President Clinton and the United States Department of Agriculture to redraft the proposed regulations concerning organic food to reflect the recommendations of the National Organic Standards Board and to ensure compatibility with the California Organic Foods Act of 1990 (Article 7 (commencing with Section 110810) of Chapter 5 of Part 5 of Division 104 of the Health and Safety Code); and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President of the United States and to the United States Department of Agriculture.

RESOLUTION CHAPTER 37

Assembly Concurrent Resolution No. 113—Relative to Kids Watch.

[Filed with Secretary of State May 4, 1998.]

WHEREAS, California's communities recognize Neighborhood Watch as an effective means for keeping crime out of neighborhoods; and

WHEREAS, Neighbors and law enforcement agencies can work together to create an effective crimefighting team; and

WHEREAS, Much remains to be done to ensure the safety of our homes, our neighborhoods, and our communities for ourselves and our children; and

WHEREAS, Neighborhood Watch teaches children respect for the law, reinforces community values, and encourages the kind of individual responsibility that makes for healthy, creative neighborhoods populated by safer and happier citizens; and

WHEREAS, The San Diego Neighborhood Watch Board of Advisors was formed in March of 1997 to build upon the original concepts of Neighborhood Watch; and

WHEREAS, The San Diego Neighborhood Watch is launching a new program this year called Kids Watch to teach children how to be safe in their community; and

WHEREAS, Kids Watch will include lessons in water safety, fire safety, and identification of hazardous situations, and will also require the children to work on community projects; and

WHEREAS, Kids Watch will introduce its mascot this year, which will be named by local elementary school children; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the San Diego Neighborhood Watch Board of Advisors is to be commended for creating Kids Watch; and be it further

Resolved, That the Legislature of the State of California encourages the citizens of San Diego to support Kids Watch as an innovative and effective means of fighting crime and teaching children how to be safe in their neighborhoods; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Mayor of San Diego, to members of the city council and to the Chief of Police for the City of San Diego, and to the San Diego Neighborhood Watch Board of Advisors.

RESOLUTION CHAPTER 38

Assembly Concurrent Resolution No. 121—Relative to Water Awareness Month.

[Filed with Secretary of State May 4, 1998.]

WHEREAS, Water is California's most precious natural resource and every effort should be made to conserve its usage and ensure that adequate supplies are available; and

WHEREAS, The drought years of 1987–1993 taught Californians the importance of conserving water for the health and welfare of the state; and

WHEREAS, Residents, local governments, and businesses have successfully decreased the use of water in California through a variety of conservation efforts and programs; and

WHEREAS, All Californians must continue to conserve water and to use water wisely, and to be made aware of the policies and practices that promote water conservation; and

WHEREAS, Water conservation is an ongoing process that must give rise to lifetime habits in order to be fully successful; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates the month of May of each year Water Awareness Month, joining the Governor, the California Water Awareness Campaign, and numerous cities, agencies, and other organizations in this designation, to promote an understanding of water conservation and make water conservation a way of life; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 39

Assembly Concurrent Resolution No. 126—Relative to Toxic Awareness Week.

[Filed with Secretary of State May 4, 1998.]

WHEREAS, Fourteen years ago, on May 14, 1984, a hazardous waste spill occurred in the City of Santa Barbara, California; and

WHEREAS, This hazardous waste spill resulted in the evacuation of 3,500 people from the center of town; and

WHEREAS, The training and preparedness for the emergency response to this disaster averted tragedy; and

WHEREAS, This hazardous waste accident was the largest metropolitan hazardous waste accident in recent California history; and

WHEREAS, The transportation of hazardous wastes or materials through densely populated areas is a daily and frequent occurrence; and

WHEREAS, The transporters of these wastes and materials do not always employ all possible safety precautions; and

WHEREAS, An accident involving a spill of hazardous wastes or materials could result in injuries, deaths, or the evacuation of the residents of the communities through which the transporters of hazardous wastes and materials pass; and

WHEREAS, Maintaining public health and safety is a prime responsibility of this state; and

WHEREAS, Hazardous wastes and materials are a threat to the health and safety of the citizens of California; and

WHEREAS, Despite the care taken by producers and transporters of hazardous wastes and materials, accidents and unforeseen dangers may occur; and

WHEREAS, It is critical that all individuals be aware of the dangers of handling hazardous wastes and materials and the safety precautions necessitated by the handling of these wastes and materials; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby proclaims the week of May 10, 1998, to May 16, 1998, as "Toxic Awareness Week," to commemorate the fourteenth anniversary of the toxic spill of May 14, 1984, in the City of Santa Barbara; and be it further

Resolved, That the Legislature of the State of California urges all Californians to reflect upon the role that hazardous wastes and materials play in the state's daily domestic and commercial existence; and be it further

Resolved, That the Legislature of the State of California encourages California's public schools and businesses to sponsor programs to inform students and employees of those accident prevention measures that should be taken when dealing with hazardous wastes and materials and of proper emergency responses to accidents involving a spill of hazardous wastes or materials; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Mayor and City Council of the City of Santa Barbara and to the Board of Supervisors of the County of Santa Barbara.

RESOLUTION CHAPTER 40

Assembly Concurrent Resolution No. 128—Relative to California Architecture Week.

[Filed with Secretary of State May 4, 1998.]

WHEREAS, Architecture influences the daily lives of all Californians through the definition and enhancement of the areas in which we work, play, and live; and

WHEREAS, More than 20,000 licensed architects practice in California and are entrusted by the state to protect public health, safety, and welfare through their concern for, and understanding of, such important issues as seismic safety, growth management, accessibility for people with disabilities, historic preservation, energy conservation, housing for the homeless, and the sensitivity of the relationship between nature and the built environment; and

WHEREAS, California architects have been recognized as forerunners of architectural design in the United States and have helped create California's unique visual character through their innovative and responsive designs of public and private spaces; and

WHEREAS, Architects have worked with teachers to establish a built environment education program in California's public schools to teach young people about the relationship between people and their built environments; and

WHEREAS, The American Institute of Architects, California Council (AIACC), in representing architects and the architectural profession in California, has worked in concert with other organizations in the design and construction industry to endeavor to streamline the state government's regulations of their industries; and

WHEREAS, Architects at local AIA chapters have worked diligently to represent architects and the architectural profession and to serve the public interest on such issues as community disaster assistance following earthquakes and fires, managing growth, housing the homeless, and preserving the architectural heritage of our communities; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the week of April 20 to April 26, 1998, inclusive, as California Architecture Week and urges all Californians to become aware of architecture, architectural design, and the architects who helped to shape our built and natural environments.

RESOLUTION CHAPTER 41

Assembly Joint Resolution No. 65—Relative to the Healthy Families Program.

[Filed with Secretary of State May 6, 1998.]

WHEREAS, The California Legislature and the Governor, on a bipartisan basis, enacted Assembly Bill 1126 and other conforming legislation to establish the Healthy Families Program; and

WHEREAS, The Healthy Families Program embodies the Governor's vision of providing private insurance to the children of working parents whose employers do not provide dependent health

insurance coverage and whose family income is insufficient to purchase private health care coverage for their children; and

WHEREAS, It was the Legislature's intent, in enacting the Healthy Families Program, that children of low-income parents who work receive the same beneficial treatment, with regard to income disregards, as families applying for Medi-Cal; and

WHEREAS, The state government expressly requested the use of income disregards to establish eligibility for the Healthy Families program, similar to the disregards applied to low-income persons applying for Medi-Cal coverage for their children; and

WHEREAS, The federal government accepted the plan developed by the administration, including the provisions of the plan which protect against crowd out; and

WHEREAS, The delay and potential elimination of families who want and need to participate in the program, since they do not have the means to purchase insurance without financial assistance, would place a great hardship on these families and their children; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California memorializes the federal Health Care Financing Administration, and the Congress and the President of the United States to preserve the state plan to implement the Healthy Families Program in its current approved form; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to the Secretary of Health and Human Services, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 42

Assembly Joint Resolution No. 66—Relative to redress for World War II Japanese Latin American internees.

[Filed with Secretary of State May 6, 1998.]

WHEREAS, During World War II, the United States government orchestrated, financed, and directed the mass arrest and deportation of 2,264 men, women, and children of Japanese ancestry from various Latin American countries to United States internment camps, according to a 1983 Congressional report; and

WHEREAS, The United States government carried out this program to use these civilians in prisoner exchanges for Americans held by the Japanese during the war; and

WHEREAS, Twelve Latin American governments—Bolivia, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, and Peru—supported this mass arrest and deportation; and

WHEREAS, In violation of basic human rights, the United States abducted those persons without charges, hearings, or any kind of due process and forcibly transported them to Immigration and Naturalization Service detention facilities in a country and culture foreign to them, far away from their homes; and

WHEREAS, Over 860 Japanese Latin Americans were sent to Japan in prisoner-of-war exchanges, while about 1,400 remained incarcerated in United States internment camps until the end of the war; and

WHEREAS, Congress passed the Civil Liberties Act of 1988 (50 U.S.C. Sec. 1989 et seq.), which provided an official apology and restitution to Japanese American internees; and

WHEREAS, The United States Department of Justice has interpreted the act to bar Japanese Latin Americans from being eligible for redress because they were not United States citizens or legal permanent residents at the time of the war; and

WHEREAS, The Japanese Latin American internees and their families seek the same official apology and restitution provided the Japanese American internees; and

WHEREAS, The Japanese Latin American internees and their families seek the United States government's acknowledgment of this tragic and largely unknown experience; and

WHEREAS, A federal class action lawsuit was filed on August 28, 1996, challenging the denial of redress to the Japanese Latin American internees and their families under the Civil Liberties Act of 1988; and

WHEREAS, More than 80 Members of Congress from across the country have publicly expressed their support for redress for the Japanese Latin American internees; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California supports the granting of an official apology and restitution to World War II Japanese Latin American internees pursuant to federal law; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 43

Assembly Concurrent Resolution No. 124—Relative to Cinco de Mayo.

[Filed with Secretary of State May 11, 1998.]

WHEREAS, May 5, or Cinco de Mayo, is a date of great importance for the Mexican and Mexican American communities; and

WHEREAS, Since May 5, 1862, this date has become one of Mexico's most celebrated national holidays and is celebrated annually by almost all Mexicans and Mexican Americans, north and south of the United States-Mexican border. The Battle of Puebla was but one of the many battles that these courageous people had to win in their long and brave struggle for independence and freedom; and

WHEREAS, The French general, confident that his battle-seasoned troops were far superior to the almost amateuristic Mexican forces, probably expected little or no opposition from the Mexican army. However, on that historic day the French army, which had not tasted defeat in half a century against Europe's finest troops, suffered a disastrous loss at the hands of an outnumbered, ill-equipped, and ragged, but highly spirited and courageous Mexican force; and

WHEREAS, Napoleon III of France was not only planning to build an empire for himself in Mexico, but was actually looking ahead to then aiding the Southern states in their fight against the North in the American Civil War in order to procure the South's cotton, which was much needed by France; and

WHEREAS, After three bloody assaults upon Puebla in which over a thousand gallant Frenchmen lost their lives, the once handsomely uniformed French troops were finally defeated and driven back by the outnumbered Mexican troops. The courageous and heroic spirit that General Zaragoza and his men displayed during this historic battle can never be forgotten. The battle of Cinco de Mayo in which many brave Mexicans willingly gave their lives for the cause of justice and freedom was instrumental in keeping Mexico from falling under European domination at that time; and

WHEREAS, Cinco de Mayo is not only the commemoration of the rout of the French troops at the town of Puebla in Mexico, but also a celebration of the virtues of individual courage and patriotism of all Mexicans and Mexican Americans who have fought for freedom and independence against foreign aggressors; and

WHEREAS, Cinco de Mayo reminds us that the foundation of our nation is built by people from many nations and diverse cultures who are willing to fight and die for freedom; and

WHEREAS, Cinco de Mayo also reminds us of the close ties, spiritual as well as economic, that bind the people of Mexico and the

people of the United States, and especially California, the home of millions of Mexicans and Mexican Americans; and

WHEREAS, In the larger sense, Cinco de Mayo symbolizes the right of a free people to self-determination just as Benito Juárez once said, "El respeto al derecho ajeno es la paz" (The respect of other people's rights is peace); now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby calls on all the people of California to join in celebrating Cinco de Mayo as a day to honor the valiant spirit of the brave Mexicans who defended the town of Puebla and the Mexican Americans of today who have fought and died for the freedom of the United States of America; and be it further

Resolved, That the Legislature recognizes May 5 as Cinco de Mayo.

RESOLUTION CHAPTER 44

Assembly Concurrent Resolution No. 150—Relative to commemorating the Russian people for their contributions and impact during World War II.

[Filed with Secretary of State May 11, 1998.]

WHEREAS, More than half a century has passed since the tragic events of World War II transpired; and

WHEREAS, World War II lasted six years and a day, and, in both human and material terms, its cost was appalling and, in certain aspects, beyond any estimation; and

WHEREAS, The invasion of peaceful European nations by Nazi Germany in 1939 triggered the devastation of World War II; and

WHEREAS, It was Japan and not Germany that ultimately plunged the United States into World War II and the United States joined allied nations to restore the liberty of peace-loving people and the sovereignty of every nation; and

WHEREAS, It began for the United States on December 7, 1941, when Japanese aircraft attacked the United States Pacific fleet at anchor in Pearl Harbor in Hawaii and propelled enraged Americans to arms; and

WHEREAS, The United States, Canada, and Great Britain declared war on Japan on December 8, 1941, and Germany and Italy declared war on the United States on December 11, 1941; and

WHEREAS, Churchill, Roosevelt, and Stalin, the leaders of the three major allied powers, Great Britain, the United States, and the Soviet Union, were known during World War II as the "Big Three," and they and their military advisers planned the strategy that eventually defeated the Axis; and

WHEREAS, The Soviet Union and its people played a pivotal role that hastened the end of the war in Europe; and

WHEREAS, For example, the Russian people during their confrontations with the Germans are to be commended for their offensive operations in Belorussia between the fall of 1943 and the winter of 1944 when, at a cost of heavy casualties, Russian forces advanced from 50 to 100 kilometers into east Prussia against the Germans; and

WHEREAS, In addition, of importance is the Russian offensive where Russian troops moved slowly forward during the summer and fall of 1943, and, in January 1944, ended the siege of Leningrad (now St. Petersburg), which had begun in 1941; and

WHEREAS, The capture of Berlin, then Germany's capital, was left to Russian forces, and by April 25, 1945, Russian troops had surrounded the city and from a bunker deep underground Adolf Hitler ordered German soldiers to fight on, but committed suicide himself on April 30, 1945; and

WHEREAS, On May 7, 1945, Colonel General Alfred Jodl, Chief of Staff of the German armed forces signed a statement of unconditional surrender at General Dwight D. Eisenhower's headquarters in Reims, France, ending World War II in Europe; and

WHEREAS, A separate German surrender to the Soviet Union was signed at Karlshorst, near Berlin, on May 8, 1945; and

WHEREAS, Victory in Europe Day (V-E Day), May 8, commemorates the unconditional surrender of Germany to Allied Forces; and

WHEREAS, It is appropriate to recognize the combined labors and sacrifices of our European allies, especially those of the Russian people who accelerated the end of World War II; and

WHEREAS, Russia's front against the Third Reich during World War II led to a quicker restoration of international peace and security in the European Theater; and

WHEREAS, The Soviet Union suffered about $7^1/_2$ million battle deaths and 19 million civilian deaths, an abominable loss of lives; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That, the Legislature memorializes this overwhelming loss of Russian lives during World War II; and be it further

Resolved, That in recognition of the contributions and impact that the Russian people had in expediting the end of World War II, it is appropriate that these individuals be honored on May 8, 1998, the anniversary of Victory in Europe Day (V-E Day); and be it further

Resolved, That the Legislature encourages all Californians to join in honoring the Russian people who fought as our allies during World War II; and be it further

Resolved, That the Legislature also encourages all Californians to remember the loss of so many Russian lives during World War II; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 45

Senate Concurrent Resolution No. 60—Relative to the Western Star Lodge No. 2.

[Filed with Secretary of State May 11, 1998.]

WHEREAS, The Western Star Lodge No. 2 is celebrating its 150th Anniversary, and it is appropriate at this time to highlight its many achievements and to underscore the positive impact that it has made in the Shasta community; and

WHEREAS, The Western Star Lodge No. 2 is the oldest chartered lodge in the State of California; and

WHEREAS, The precursor to Western Star Lodge No. 2, Western Stars Lodge No. 98, was chartered on May 10, 1848, when California was a territory of the United States; and

WHEREAS, Western Stars Lodge No. 98 obtained its charter through the efforts of Peter Lassen and Saschel Woods and was first established in Benton City, Territory of California; and

WHEREAS, On April 17, 1850, the Master Masons of five lodges in California met to form "The Most Worshipful Grand Lodge of Free and Accepted Masons of the State of California"; and

WHEREAS, At the first proceedings of the Grand Lodge of California, Western Stars Lodge No. 98 was erroneously assigned No. 2, despite the fact that it was the first lodge to meet and organize in California; and

WHEREAS, On May 9, 1851, Western Star Lodge No. 2 received permission and was moved to Shasta City in the newly formed Shasta County, one of the original 27 counties in the new State of California; and

WHEREAS, Fire destroyed the business district of Shasta City on June 14, 1853, including the building in which the lodge met; and

WHEREAS, During the next year and a half the lodge met in the home of Benjamin Shurtleff on a hill overlooking the town; and

WHEREAS, On December 27, 1854, Saint John's Day, the lodge moved in grand procession to its current location, a fireproof brick building on Main Street; and

WHEREAS, Since that time, the Western Star Lodge No. 2 has continuously occupied the building at 15344 Main Street in the Town of Shasta; and

WHEREAS, The lodge has also established a lodge archives and an archives vault on the premises to store, preserve, and display its various relics, documents, antiques, and articles of Masonic historic value; and

WHEREAS, Western Star Lodge No. 2 proudly continues to meet in the manner and character of Masons to initiate, pass, and raise all good men and true who may apply for the purpose and whom they may find worthy; and

WHEREAS, The contributions that the Western Star Lodge No. 2 has made to the local area are invaluable, and reflect an organization devoted to the highest ideals of fraternal and community service; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Department of Transportation is requested to grant to the Western Star Lodge No. 2, without charge, an encroachment permit that will authorize an appropriate historical plaque dedicated to the Western Star Lodge No. 2 to be placed within the right-of-way of State Highway Route 299 in the Town of Shasta, Shasta County; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Director of Transportation, the Director of Parks and Recreation, and the Western Star Lodge No. 2.

RESOLUTION CHAPTER 46

Senate Joint Resolution No. 35—Relative to Filipino veterans.

[Filed with Secretary of State May 11, 1998.]

WHEREAS, The Philippine Islands, as a result of the Spanish-American War, were a possession of the United States between 1898 and 1946; and

WHEREAS, In 1934, the Philippine Independence Act (P.L. 73-127) set a 10-year timetable for the eventual independence of the Philippines and in the interim established a government of the Commonwealth of the Philippines with certain powers over its own internal affairs; and

WHEREAS, The granting of full independence ultimately was delayed for two years until 1946 because of the Japanese occupation of the islands from 1942 to 1945; and

WHEREAS, Between 1934 and the final independence of the Philippine Islands in 1946, the United States retained certain sovereign powers over the Philippines, including the right, upon order of the President of the United States, to call into the service of the United States Armed Forces all military forces organized by the Commonwealth government; and

WHEREAS, President Franklin D. Roosevelt, by Executive order of July 26, 1941, brought the Philippine Commonwealth Army into the service of the United States Armed Forces of the Far East under the command of Lieutenant General Douglas MacArthur; and

WHEREAS, Approximately 200,000 Filipino soldiers, driven by a sense of honor and dignity, battled under the United States Command after 1941 to preserve our liberty; and

WHEREAS, There are four groups of Filipino nationals who are entitled to all or some of the benefits to which United States veterans are entitled. These are:

(1) Filipinos who served in the regular components of the United States Armed Forces.

(2) Regular Philippine Scouts, called "Old Scouts," who enlisted in Filipino-manned units of the United States Army prior to October 6, 1945. Prior to World War II, these troops assisted in the maintenance of domestic order in the Philippines and served as a combat-ready force to defend the islands against foreign invasion, and during the war, they participated in the defense and retaking of the islands from Japanese occupation.

(3) Special Philippine Scouts, called "New Scouts," who enlisted in the United States Armed Forces between October 6, 1945, and June 30, 1947, primarily to perform occupation duty in the Pacific following World War II.

(4) Members of the Philippine Commonwealth Army who on July 26, 1941, were called into the service of the United States Armed Forces. This group includes organized guerrilla resistance units that were recognized by the United States Army; and

WHEREAS, The first two groups, Filipinos who served in the regular components of the United States Armed Forces and Old Scouts, are considered United States veterans and are generally entitled to the full range of United States veterans benefits; and

WHEREAS, The other two groups, New Scouts and members of the Philippine Commonwealth Army, are eligible for certain veterans benefits, some of which are lower than full veterans benefits; and

WHEREAS, United States veterans medical benefits for the four groups of Filipino veterans vary depending upon whether the person resides in the United States or the Philippines; and

WHEREAS, The eligibility of Old Scouts for benefits based on military service in the United States Armed Forces has long been established; and

WHEREAS, The federal Department of Veterans Affairs operates a comprehensive program of veterans benefits in the present government of the Republic of the Philippines, including the operation of a federal Department of Veterans Affairs office in Manila; and

WHEREAS, The federal Department of Veterans Affairs does not operate a program of this type in any other country; and

WHEREAS, The program in the Philippines evolved because the Philippine Islands were a United States possession during the period 1898–1946, and many Filipinos have served in the United States Armed Forces, and because the preindependence Philippine Commonwealth Army was called into the service of the United States Armed Forces during World War II (1941–1945); and

WHEREAS, Our nation has failed to meet the promises made to those Filipino soldiers who fought as American soldiers during World War II; and

WHEREAS, Many Filipino veterans have been unfairly treated by the classification of their service as not being service rendered in the United States Armed Forces for purposes of benefits from the federal Department of Veterans Affairs; and

WHEREAS, All other nationals who served in the United States Armed Forces have been recognized and granted full rights and benefits, but the Filipinos, as American nationals at the time of service, were and still are denied recognition and singled out for exclusion, and this treatment is unfair and discriminatory; and

WHEREAS, In 1997, House Resolution No. 836 was introduced in the United States House of Representatives to amend the Filipino Veterans Equity Act of 1995 to deem service in the organized military forces of the government of the Commonwealth of the Philippines and the Philippine Scouts during World War II to be active service for the purpose of benefits under programs administered by the Secretary of Veteran Affairs; and

WHEREAS, House Resolution No. 836 would bring relief to the estimated remaining 60,000 to 70,000 Filipino veterans (out of the initial 175,000 to 200,000 troops) who risked their lives during World War II and survived the occupation of the Philippine Islands and the infamous Bataan Death March, and who, now in their 60's to 90's, have been battling for years to obtain the benefits of other veterans of that war; and

WHEREAS, On October 20, 1996, President Clinton issued a proclamation honoring the nearly 100,000 Filipino veterans of World War II, soldiers of the Philippine Commonwealth Army, who fought as a component of the United States Armed Forces alongside allied forces for four long years to defend and reclaim the Philippine Islands, and thousands more who joined the United States Armed Forces after the war; now, therefore, be it

Resolved by the Senate and the Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States during the Second Session of the 105th Congress to take action necessary to honor our country's moral obligation to provide these Filipino veterans with the military benefits that they deserve, including, but not limited to, holding related hearings, and acting favorably on legislation pertaining to granting full veterans benefits

to Filipino veterans of the United States Armed Forces; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 47

Assembly Concurrent Resolution No. 118—Relative to Juror Appreciation Week.

[Filed with Secretary of State May 12, 1998.]

WHEREAS, The Constitution of the United States of America and the Constitution of the State of California provide for trial by jury as an essential right of citizenship; and

WHEREAS, The right to a jury trial in both criminal and civil cases is guaranteed to every citizen as a fundamental component of the American legal system; and

WHEREAS, Over 500,000 California citizens annually participate in the judicial process by serving as trial jurors; and

WHEREAS, The Blue Ribbon Commission on Jury System Improvement formed by the Judicial Council of California, the policymaking body for California's courts, emphasized in its final report to the California Legislature that an effective jury system is of critical importance to public respect for the rule of law; and

WHEREAS, The Jury Education Management Forum, a statewide organization of jury managers operating under the auspices of the California Association of Trial Court Administrators, is working in partnership with the judiciary and staff of all California trial courts to educate the public about jury service and to recognize individuals who have generously committed their time in jury service and in continuing support of the jury system; and

WHEREAS, The Jury Education Management Forum, with the concurrence of the California Association of Trial Court Administrators and the Judicial Council of California, has requested that the week of May 10, 1998 to May 16, 1998, inclusive, and the second full week in May of each year thereafter be designated as the annual Juror Appreciation Week, a special time for the recognition of jury service and the role it plays in a democratic society; and

WHEREAS, The California Legislature joins with the Judicial Council of California and the California trial courts in encouraging all citizens to support the jury system and appear when summoned

for service, thereby fulfilling this most important civic responsibility shared by every member of a democracy; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of May 10, 1998, to May 16, 1998, inclusive, and the second full week in May of each year thereafter shall be proclaimed and celebrated as annual Juror Appreciation Week throughout the state, in honor of the thousands of citizens who support the jury system, thereby making the cherished right of trial by jury a reality; and, be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Jury Education Management Forum, the California Association of Trial Court Administrators, and the Judicial Council of California.

RESOLUTION CHAPTER 48

Assembly Concurrent Resolution No. 117—Relative to Hire-A-Veteran Week.

[Filed with Secretary of State May 13, 1998.]

WHEREAS, Although most Americans appreciate the security they have in their lives, this good life is often taken for granted; it is good to remember that throughout history, it has usually been members of the armed forces, serving their country, who make this security possible; and

WHEREAS, Veterans justifiably remember with pride their role in bringing and keeping the peace at home and abroad; the hardships they endured give them a deeper understanding of the privileges all Americans enjoy; and the self-sacrifice, discipline, and experience of military service are positive assets they bring to civilian life; and

WHEREAS, The people of California recognize a special obligation to those who have risked their lives in the defense of this nation's freedom and honor; and

WHEREAS, Californians salute the Persian Gulf veterans, and indeed, all those who have served in our nation's armed forces; and

WHEREAS, Californians also recognize the wealth of knowledge, experience, and training that veterans have to offer as members of the civilian work force; and

WHEREAS, From the beginning of Operation Desert Shield, the American military showed that it is capable of planning and executing tremendously complex and sensitive operations; and the success in the Persian Gulf highlighted not only the superiority of American technology but also the troops' ability to employ these remarkable tools; and

WHEREAS, Through their outstanding achievements in the Persian Gulf region and elsewhere, America's veterans have helped change the world; and

WHEREAS, The nation's armed services veterans can play an important role in achieving continued prosperity and progress here at home; and

WHEREAS, As America restructures its national defense forces in light of new international security requirements, it is important to ensure that the United States continues to benefit from the knowledge and expertise of its veterans by encouraging their full participation in the civilian work force; and

WHEREAS, Like every nation, the United States is challenged today by a global economic transition; and because Americans who have served in the military have the discipline, motivation, and skills, including the highly technical skills that are essential to keeping American business and industry competitive, it is important to recognize the importance of recruiting and hiring veterans; and

WHEREAS, The American employer is prepared to stand behind the employee who is called to active military service and to safeguard that individual's employment rights while he or she is away; and

WHEREAS, During the week of May 3, 1998, to May 9, 1998, inclusive, the value of recruiting and hiring these Americans in the workplace should be recognized, because veterans have developed special knowledge and skills through their military service, and they clearly possess the drive and the discipline that are needed to help keep American business competitive in the international arena; and

WHEREAS, It is estimated that some 60,000 to 80,000 military personnel leave the United States Armed Services and seek employment in California every year; and

WHEREAS, The Governor and California Legislature declared 1995 as the "Year of the Veteran" as one way to let California veterans realize that their contributions are appreciated and also to make them aware of the services that they have earned by their efforts; and

WHEREAS, California has the largest United States veteran population at approximately 3.3 million armed forces personnel, (12.2 percent of the nationwide veteran population of nearly 27 million), and an impressive 10 percent of the Golden State's entire population; and

WHEREAS, It is estimated that 20.6 million of the nation's veteran population (76 percent) are actual combat wartime veterans of which 1.2 million (5.8 percent) are women; and

WHEREAS, Despite the capacity of this state's economy, veterans, especially Vietnam veterans, suffer a disproportionate share of unemployment; and

WHEREAS, As of 1991, 79.8 percent of all living veterans (both men and women) were reported in the labor force, while those who were in institutions, schools, or other situations accounted for the

remainder. Of the 21.5 million veterans in the labor force, only 4.6 percent were women; and

WHEREAS, Within California, nearly 300,000 veterans are disabled, and approximately eight percent of these veterans have experienced substance abuse or post-traumatic stress disorders; and

WHEREAS, The people of California benefit from a sound and growing economy that is often described as the seventh largest in the world; however, many employer's job openings remain unfilled, resulting in a loss in production of goods and services, while at the same time, many veteran job seekers are unable to find employment and suffer wage loss and reduced buying power; and

WHEREAS, Current law requires the Director of the Employment Development Department (EDD) to maintain a veterans placement service devoted to securing work for veterans, and to accord veterans priority for services pursuant to federal law; and

WHEREAS, Job training and outreach programs for Vietnam era, disabled, and recently separated veterans need to overcome barriers that impede veterans reentering the civilian work force; and

WHEREAS, Employment Development Department (EDD) compensation to military veterans takes the form of a priority in receiving departmental services, such as job referrals, referrals to training, and the provision of counseling, testing and related services; and

WHEREAS, Increased technical assistance provided by EDD in determining which military occupations have civilian counterpart jobs that require licensure by state or local agencies, can produce greater job placement and help in determining barriers that impede veterans reentering the civilian work force from acquiring these licenses; and

WHEREAS, Local Veterans Employment Representatives (LVER) assist severely disabled veterans and veterans who have unusual employment problems and promote employer interest in hiring veterans; and

WHEREAS, The Transition Assistance Program (TAP) is an intensive employment preparation program designed to assist individuals leaving the military to make a smooth transition into a rewarding, successful career in the private sector; and

WHEREAS, From October 1, 1994, to September 30, 1995, there were 632 TAP Classes offered to 27,002 students; and

WHEREAS, Service Members Occupational Conversion and Training Act (SMOCTA) is a new training program designed to assist individuals who are forced or induced to leave military service due to the reductions occurring in the armed forces, and veterans discharged on or after August 2, 1990, are eligible for this program if they meet specified requirements: and

WHEREAS, From August 1, 1993 to December 31, 1994, SMOCTA certified 6,169 veterans, issued 1,386 contracts, hired 951 veteran

employees, paid an average of $9.43 per hour in wages, and allocated $4.7 million to employers; and

WHEREAS, Veteran statistics reveal that during the period of July 1, 1994 to June 30, 1995, EDD registered 138,615 veterans, placed 27,415 veterans, provided 100,346 reportable services, and recorded 18,309 job development contacts; and

WHEREAS, Priority programs like the Employment Training Panel (ETP) result in the growth of the California economy by stimulating exports from the state, and the production of goods and services that would otherwise be imported from outside the state; and

WHEREAS, The ETP is required to give special consideration for training of veterans, and to give technical assistance to encourage the development of training projects for veterans; and

WHEREAS, The state receives federal training funds pursuant to the federal Job Training Partnership Act (JTPA), which funds provide specialized training and re-training programs to prepare for displaced workers, targeted veterans, unskilled adults, and older individuals for entry into the labor force; and

WHEREAS, In addition to local job training funds provided by Title II of the JTPA, Title IV-C authorizes state distribution of designated JTPA funds for job training and outreach programs for Vietnam era, disabled, and recently separated veterans; and now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby encourages all California employers to do everything possible to hire veterans, especially disabled veterans; and be it further

Resolved, That the week of May 3, 1998, to May 9, 1998, inclusive, is hereby designated and shall be observed as "Hire-A-Veteran Week"; and be it further

Resolved, That the Legislature of the State of California encourages all Californians to join in a statewide salute to the combined achievements of veteran employees in the workplace, and encourages all appropriate national, state, and local activity that will broaden the recognition of employing America's veterans.

RESOLUTION CHAPTER 49

Assembly Concurrent Resolution No. 119—Relative to multiple sclerosis.

[Filed with Secretary of State May 13, 1998.]

WHEREAS, Multiple sclerosis, a neurological disease of the central nervous system, is the most common disabling disease of young adults

in the United States, affecting one-third of a million people nationwide; and

WHEREAS, Multiple sclerosis generally strikes young adults aged 20 through 40 years, attacking them in the prime of their lives; and

WHEREAS, Individuals with multiple sclerosis face an incredible daily challenge of learning to live with this unpredictable disease; and

WHEREAS, Multiple sclerosis is a disease that may rob individuals of significant physical and mental abilities, their livelihood, and their independence; and

WHEREAS, The progress, severity, and specific symptoms of multiple sclerosis cannot be foreseen; and

WHEREAS, While research advances have brought us closer to finding the cure, prevention, treatment, and cause for multiple sclerosis, much remains to be done, and services must continue to be provided to those who live with this disease; and

WHEREAS, The National Multiple Sclerosis Society has provided more than $231 million for biomedical research and fellowship grants during the past five decades, as well as a wide range of client services in the areas of health, knowledge, and independence through its 50-state network of chapters and its home office; and

WHEREAS, In its quest to end the devastating effects of multiple sclerosis for over 50 years, the National Multiple Sclerosis Society is the one thing persons with multiple sclerosis can count on; and

WHEREAS, Supporting the National Multiple Sclerosis Society's ongoing research, service, and education programs will help it reach its goal to end the devastating effects of multiple sclerosis is an important task that all Californians should support; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That in recognition of the ongoing battle against the devastating disease of multiple sclerosis and the important work of the National Multiple Sclerosis Society, the Legislature hereby proclaims the month of May 1998 as National Multiple Sclerosis Society Month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the home office of the National Multiple Sclerosis Society, and to each chapter of the society within California.

RESOLUTION CHAPTER 50

Assembly Concurrent Resolution No. 135—Relative to California Fitness Month.

[Filed with Secretary of State May 13, 1998.]

WHEREAS, Exercise and fitness activities can increase self-esteem, boost energy, strengthen the heart and muscles, burn calories, and improve cholesterol levels; and

WHEREAS, Exercise and fitness activities are excellent ways to relieve stress, lower the risk of heart disease, hypertension and diabetes, prevent bone loss, and decrease the risk of some cancers; and

WHEREAS, A person's fitness level has a dramatic effect on the body's ability to produce energy and to reduce fat; and

WHEREAS, A fit person burns a higher percentage of fat not only during activity, but also at rest, fit people have a higher proportion of muscle tissue, which burns more calories than fat does, and those with more muscle mass can eat more calories and still maintain a healthy weight; and

WHEREAS, To lose weight and keep it off, one should do an enjoyable moderate-intensity aerobic activity for 30 to 60 minutes, three to five times a week; and

WHEREAS, A person should also do muscle-strengthening exercises two or three times a week, and should concentrate on maintaining a balanced diet; and

WHEREAS, Most popular diet programs cannot produce long-lasting weight reduction results without exercise; and

WHEREAS, There is no age limit for physical activity. Among the elderly, exercise provides cardiovascular, respiratory, neuromuscular, metabolic, and mental health benefits; and

WHEREAS, Fitness activities have been shown to sharpen mental ability in all people, and to retard the aging process; and

WHEREAS, Maximizing one's energy level, increasing muscle mass, and reducing body fat, increases one's chances of living a longer, healthier life; and

WHEREAS, More than 60 percent of American adults do not get the recommended amount of physical activity, 25 percent of American adults are not active; and

WHEREAS, Nearly all American youths from 12 to 21 years of age are not vigorously active on a regular basis; and

WHEREAS, The State Department of Education reports that a majority of California's children are not physically fit; and

WHEREAS, The Legislature seeks to advance the physical fitness of all Californians by educating them about the benefits of exercise and a balanced diet; and

WHEREAS, The Legislature will increase public awareness about the benefits of exercise and physical fitness by encouraging members to host events in their districts that stimulate physical fitness and increase participation by Californians in activities that promote physical health and benefit both mental and physical well-being; and

WHEREAS, The Legislature encourages its members, as well as organizations, businesses, and individuals to sponsor and attend physical fitness events that are informative, fun, and result in a

number of Californians becoming physically fit; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the month of May 1998 as California Fitness Month, and encourages all Californians to enrich their lives through proper diet and exercise; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 51

Assembly Concurrent Resolution No. 137—Relative to State Parks Month.

[Filed with Secretary of State May 13, 1998.]

WHEREAS, California is home to 265 state parks that showcase California's rich ecological and cultural diversity; and

WHEREAS, State parks are state and national treasures that are in place, in part, to help preserve the environment; and

WHEREAS, State parks provide many recreational opportunities, including opportunities for swimming, surfing, windsurfing, sailing, fishing, mountain biking, horseback riding, cross-country skiing, off-highway vehicle recreation, and hiking; and

WHEREAS, State parks offer thousands of educational and recreational programs led by staff and volunteers, including nature walks, campfire talks, museums, cultural programs, living history events, and special programs for children; and

WHEREAS, State Parks Month, which is celebrated in the month of May, promotes awareness of the natural environment, and increases use of state parks; and

WHEREAS, This year's theme, "Strike it Rich! Discover California State Parks," commemorates California's sesquicentennial celebration; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That May 1998, is proclaimed as State Parks Month, and that the Legislature encourages all Californians to participate in activities held throughout the month of May to commemorate this observance.

RESOLUTION CHAPTER 52

Assembly Concurrent Resolution No. 152—Relative to California Nurses' Week.

[Filed with Secretary of State May 13, 1998.]

WHEREAS, There are over 320,000 working nurses in California whose charge is to care for and protect the public and to meet the different and emerging health care needs of the people of California; and

WHEREAS, Nursing associations in California are working to chart new courses for a nation of healthy people; and

WHEREAS, The state's renewed emphasis on primary and preventive health care will require increased efficiency from all of California's working nurses; and

WHEREAS, The demand for nursing services will be greater than ever because of the "aging" of California, longer life expectancies, new technologies, and the explosive growth of home health services; and

WHEREAS, Safe and affordable health care offered by registered nurses is becoming an increasingly critical link in the delivery of quality care; now therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby acknowledges California Nurses' Week in association with National Nurses' Week in 1998 as the week of May 6, which is National Nurses' Day, through May 12, which is Florence Nightingale's birthday, and that the Legislature pays tribute to the many ways in which nurses work to provide care, compassion, and comfort to those in need; and be it further

Resolved, That the Members of the Legislature urge the residents of this great state to honor nurses for their outstanding efforts and accomplishments both in working to strengthen the health of all Californians and improve our nation's health care system, and to show their appreciation for the work of California's nurses not only during California Nurses' Week, but at every opportunity throughout the year.

RESOLUTION CHAPTER 53

Senate Concurrent Resolution No. 87—Relative to Amyotrophic Lateral Sclerosis Awareness Month.

[Filed with Secretary of State May 15, 1998.]

WHEREAS, More than 30,000 Americans suffer from amyotrophic lateral sclerosis (ALS), and will die within 3 to 5 years; and

WHEREAS, It is estimated that 300,000 Americans that are alive and healthy today will die of ALS; and

WHEREAS, ALS is always fatal; and

WHEREAS, There is currently no known cause or cure for ALS; and

WHEREAS, ALS patients require 24-hours-a-day care, and the care givers are most often a spouse or child; and

WHEREAS, ALS causes a gradual, but eventually complete, paralysis. The only muscles not affected by ALS are the eyes and heart; and

WHEREAS, ALS patients lose the ability to speak, swallow, and even breathe on their own; and

WHEREAS, The greater Sacramento Chapter of the Amyotrophic Lateral Sclerosis Association's volunteer leadership is continuing the war against ALS by providing public education, advocacy, fund development for research, and patient services; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims the month of May 1998 as "Amyotrophic Lateral Sclerosis Awareness Month"; and be it further

Resolved, That the Legislature encourages all Californians to join the Amyotrophic Lateral Sclerosis Association in its war against the deadly disease of amyotrophic lateral sclerosis.

RESOLUTION CHAPTER 54

Assembly Concurrent Resolution No. 109—Relative to California Peace Officers Memorial Day.

[Filed with Secretary of State May 15, 1998.]

WHEREAS, May 8, 1998, is California Peace Officers Memorial Day, a day Californians observe in commemoration of those noble peace officers who have tragically sacrificed their lives in the line of duty; and

WHEREAS, Although the citizens of California are indebted to our peace officers each day of the week, we take particular note of their bravery and dedication and we share in their losses on California Peace Officers Memorial Day; and

WHEREAS, California peace officers have a job second to none in importance, and it is a job that is as difficult and dangerous as it is important; and

WHEREAS, The peace officers of California have worked devotedly and selflessly on behalf of the people of this great state, regardless of the peril or hazard to themselves; and

WHEREAS, By the enforcement of our laws, these same officers have safeguarded the lives and property of the citizens of California,

and have given their full measure to ensure those citizens the right to be free from crime and violence; and

WHEREAS, Special ceremonies and observances on behalf of California peace officers provide all Californians with the opportunity to appreciate the heroic men and women who have dedicated their lives to preserving public safety; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the members designate Friday, May 8, 1998, as California Peace Officers Memorial Day; and be it further

Resolved, That the members designate the week of May 10–16, 1998, as National Police Week and urge all citizens to remember those individuals who gave their lives for our safety, and to express their appreciation for those who continue to dedicate themselves to making California a safer place in which to live and raise our families.

RESOLUTION CHAPTER 55

Assembly Concurrent Resolution No. 110—Relative to California Bike Commute Day.

[Filed with Secretary of State May 18, 1998.]

WHEREAS, Bicycle commuting is an effective means to conserve energy and reduce pollution; and

WHEREAS, Bicycle commuting promotes the "livability" of communities by reducing traffic noise and congestion; and

WHEREAS, Many businesses have made efforts to help customers and employees commute by bicycle, including the installation of bicycle parking and other commute facilities; and

WHEREAS, Bicycle transportation is an integral part of the "multi-modal" transportation systems planned by federal, state, regional, and local transportation agencies; and

WHEREAS, Local bicycle commuting promotions, often known as "bike-to-work" days, successfully encourage bicycle commuting; and

WHEREAS, The California Bicycle Coalition and the American Lung Association of California have worked cooperatively with many state and local groups and individuals to designate a single day to promote bicycle commuting and air quality; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That Thursday, May 21, 1998, is proclaimed California Bike Commute Day throughout the state; and be it further

Resolved, That all state agencies are encouraged to participate in California Bike Commute Day through the use of existing transportation coordinators and programs; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor, air pollution control districts and air quality management districts, councils of government, the California State Association of Counties, and the League of California Cities.

RESOLUTION CHAPTER 56

Senate Concurrent Resolution No. 88—Relative to Organ and Tissue Donor Awareness Month.

[Filed with Secretary of State May 19, 1998.]

WHEREAS, More than 57,000 individuals are currently on the national waiting list for an organ transplant, but only about 20,000 will receive one this year due to a critical shortage of donors; and

WHEREAS, Approximately 7,000 Californians need organ transplants and thousands more need tissue transplants; and

WHEREAS, Every three hours one person dies while waiting for a transplant; and

WHEREAS, An estimated 10,000 to 14,000 people who die each year meet the medical criteria for organ donation, but less than half of that number become actual donors; and

WHEREAS, A leading reason for this low donation rate is that many families do not discuss the choice of donation prior to a family member's death or refuse to consent to donation at the time of death; and

WHEREAS, The heart, heart valves, pancreas, liver, small intestines, skin, eyes, corneas, lungs, bone, bone marrow, and kidneys are organs and tissues that may be donated; and

WHEREAS, A single donor can help more than 50 recipients; and

WHEREAS, Donors may be of all ages and creeds, and all major religions support organ and tissue donation; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature proclaims the month of April 1998 as Organ and Tissue Donor Awareness Month, and encourages Californians to learn the facts about organ donation, make a decision about becoming an organ donor, and discuss this decision with family members.

RESOLUTION CHAPTER 57

Assembly Concurrent Resolution No. 122—Relative to California State University, Los Angeles.

[Filed with Secretary of State May 20, 1998.]

WHEREAS, California State University, Los Angeles was among the important birthplaces of the Chicano movement, and California State University, Los Angeles students and graduates played leading roles in the historic events that are part of that movement; and

WHEREAS, The discipline of Chicano Studies grew out of the activism surrounding the Chicano movement, and is now institutionalized in many colleges and universities in the state; and

WHEREAS, Many of the Chicano students of California State University, Los Angeles have gone on to become distinguished scholars and political leaders, including Carlos Munoz, Professor, University of California, Berkeley; Rodolfo Acuna and Raul Ruiz, Professors, California State University, Northridge; Jaime Regalado, Professor and Director of the Pat Brown Institute, California State University, Los Angeles; Gilbert Gonzales, Professor, University of California, Irvine; David Sandoval, administrator, California State University, Los Angeles; Adolfo Vargas, administrator, California State Polytechnic University, Pomona; Sal Castro, educator; Antonio R. Villaraigosa, Speaker, California State Assembly; Joe Baca, Member, California State Assembly; Richard Alatorre, Member, Los Angeles City Council; and Lucille Roybal Allard, Member, United States House of Representatives; and

WHEREAS, California State University, Los Angeles, in celebrating the 50th anniversary of its founding, will host a nationally disseminated forum entitled "California State University, Los Angeles and the Chicano Movement," on May 7, 1998, to commemorate the contribution of the Chicano movement in advancing the civil and economic rights and opportunities of Chicanos and other Latino Californians; and

WHEREAS, This forum will feature a discussion of the status and future agenda of the Chicano movement; and

WHEREAS, Prominent graduates of California State University, Los Angeles and other Latinos from all walks of life, as well as the public at large, will be participants in the forum or in attendance; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California acknowledges the significance of the forum of May 7, 1998, and extends its good wishes to California State University, Los Angeles, on the occasion of this event and the 50th anniversary of its founding.

RESOLUTION CHAPTER 58

Assembly Concurrent Resolution No. 140—Relative to Older Californians Month.

[Filed with Secretary of State May 20, 1998.]

WHEREAS, Older Californians are a great resource of skills, wisdom, and experience upon which much of our state's progress has been built; and

WHEREAS, Nearly six million older persons in California today are active, live busy and dynamic lives, and bring generations of experience, wisdom, and leadership to all; and

WHEREAS, An ever-increasing number of older Californians improve the quality of communities statewide through many hours of volunteering and imparting their expertise, which makes them beneficial role models and mentors to young people; and

WHEREAS, An increasing number of California's older population, which is both a productive and dependable group, is part of our state's labor force and contributes to our growing economy; and

WHEREAS, More and more older Californians are leading healthy, vigorous lifestyles that enable them to participate in a wide variety of athletic program events; and

WHEREAS, Californians of all ages can demonstrate commitment to helping older Californians by protecting them from abuse, neglect, exploitation, and discrimination; and

WHEREAS, Our sense of responsibility toward older Californians is greater today than it was in the past; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature does hereby designate May 1998 as Older Californians Month in California and that the Legislature urges all Californians to honor our state's seniors by participating in activities held throughout the month to commemorate this observance.

RESOLUTION CHAPTER 59

Assembly Concurrent Resolution No. 154—Relative to Memorial Day.

[Filed with Secretary of State May 21, 1998.]

WHEREAS, The observance of Memorial Day is one of American's noblest traditions, a time when we celebrate the concept that freedom is the most basic of the beliefs on which our nation was founded and is so precious that it is worth the price of our lives to preserve it; and

WHEREAS, More than 1,300,000 Americans in the United States Armed Forces have paid the ultimate price of life to protect American's interests, to advance the ideals of democracy, and to defend the liberty that we hold so dear; and

WHEREAS, The citizens who guaranteed those freedoms with their lives have protected our peace and our right to vote, and have enabled us to exercise our freedoms of speech, assembly, and worship; and

WHEREAS, The selfless sacrifice of each of our fallen heroes who fought to preserve our freedom is cherished as we honor their memory; and

WHEREAS, The last Monday in May, which is known as Memorial Day, is an official state holiday, as specified in subdivision (g) of Section 6700 of the Government Code; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That May 25, 1998, be fully observed as Memorial Day and that the Legislature encourages all Californians to participate in appropriate programs and activities in recognition and thanks to those who perished to preserve our freedom; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for distribution.

RESOLUTION CHAPTER 60

Assembly Constitutional Amendment No. 22—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 2 of Article XIII A thereof, relating to property taxation.

[Filed with Secretary of State May 26, 1998.]

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1997–98 Regular Session commencing on the second day of December 1996, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended by amending Section 2 of Article XIII A thereof, to read:

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" shall 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 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.

(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 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 which 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 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 which 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 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.

(g) For purposes of subdivision (a), the terms "purchased" and "change in ownership" shall 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.

(h) (1) For purposes of subdivision (a), the terms "purchased" and "change in ownership" shall 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 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 occur, and new construction which 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 occur, and new construction which is completed, on or after the effective date of the amendment.

RESOLUTION CHAPTER 61

Assembly Concurrent Resolution No. 139—Relative to Reflex Sympathetic Dystrophy Syndrome Awareness Month.

[Filed with Secretary of State May 26, 1998.]

WHEREAS, Reflex Sympathetic Dystrophy (RSD) Syndrome, a progressive multisymptom, multisystem, neuromuscular, neurovascular disorder, is a debilitating disease simultaneously involving nerves, muscles, blood vessels, skin, bones, and tissue; and

WHEREAS, It can develop after an injury, minor or major, and generally occurs in a limb; and

WHEREAS, RSD attacks the sympathetic nervous system, causing it to become confused, leading to a variety of symptoms, resulting in devastating consequences; and

WHEREAS, If left untreated, or mistreated, RSD begins to damage the surrounding tissues and can spread to other areas of the body and ultimately lead to total disability; and

WHEREAS, Early diagnosis is crucial. There is a short "window of time" during which RSD can possibly be helped, usually within the first three months after onset; and

WHEREAS, Correct aggressive treatment by qualified medical professionals can lead to a positive result; and

WHEREAS, As RSD progresses, treatment becomes increasingly difficult; and

WHEREAS, Although millions are affected with RSD, it is not well known by the public or some medical professionals and this lack of knowledge causes many patients to suffer needlessly for many years; and

WHEREAS, RSD knows no age limit and can strike young and old; and

WHEREAS, Other events that can cause RSD include infections, cuts, pricks of fingers or toes, soft tissue injuries, crush injuries, injury to any area rich in nerve endings, fractures, sprains, dislocations, broken bones, multiple trauma to a particular body part, some surgical procedures, invasive procedures, and repetitive motion disorders, such as that which causes Carpal Tunnel Syndrome; and

WHEREAS, Some signs and symptoms of RSD include severe burning pain in a localized region that is out of proportion to the severity of the injury, localized edema or swelling that may not always be apparent in the later stages, hyperesthesia, which is oversensitivity to touch and light pressure, vasospasm, which affects color and temperature of skin, muscle atrophy, constant burning pain, decreased range of motion, muscle spasms, stiffness, restricted mobility, and rapid hair and nail growth; and

WHEREAS, RSD sufferers may experience some or all of the signs and symptoms. The one common element is constant burning pain, the intensity of which can fluctuate; and

WHEREAS, Although RSD dates to before the Civil War, there is no known cure; and

WHEREAS, The medical professionals must find the cause before they can find the cure; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature does hereby proclaim May 1998 as Reflex Sympathetic Dystrophy (RSD) Syndrome Awareness Month.

RESOLUTION CHAPTER 62

Assembly Concurrent Resolution No. 153—Relative to Drowning Prevention Month.

[Filed with Secretary of State May 26, 1998.]

WHEREAS, More Californians have swimming pools at their homes than ever before; and

WHEREAS, Drowning is a leading cause of death in California among children under the age of five years; and

WHEREAS, The majority of child drownings occur in residential swimming pools; and

WHEREAS, Children who survive drowning accidents often suffer permanent brain damage; and

WHEREAS, The Drowning Prevention Foundation, in cooperation with the State Department of Developmental Services, has developed a public education awareness program to promote drowning prevention; and

WHEREAS, Now that warm weather is approaching, we must be especially watchful since most drowning accidents occur during the warm weather months of April through October; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California recognizes May 1998 as Drowning Prevention Month in California and urges all citizens to participate in appropriate activities being held in conjunction with this observance.

RESOLUTION CHAPTER 63

Assembly Concurrent Resolution No. 112—Relative to Breast Cancer Awareness Month.

[Filed with Secretary of State May 27, 1998.]

WHEREAS, The most common form of cancer among women, and one of the deadliest cancers of all, breast cancer is second only to lung cancer as the leading cause of cancer deaths; and

WHEREAS, Approximately 46,000 women will die of breast cancer in the United States and about 180,000 new cases will be diagnosed in 1998; and

WHEREAS, It is an epidemic that will strike one out of 10 California women in their lifetime and approximately 5,000 California women will die of breast cancer and nearly 20,000 new cases will be diagnosed; and

WHEREAS, In California, the highest incidence of breast cancer is found in Anglo women, the highest mortality rate occurs among African-American women, and the greatest percentage of late-stage diagnosis occurs among Latino and African-American women; and

WHEREAS, In addition to the incalculable emotional costs to women and their families, the direct and indirect economic costs of breast cancer are estimated at $8 billion a year nationally in additional health care services and lost productivity; and

WHEREAS, Women in their 30's and 40's are in particular danger because breast cancer is increasingly being diagnosed in their age groups, and adding to the horror is the fact that 70 percent of women with the cancer do not exhibit any of the known risk factors; and

WHEREAS, Despite over 25 years of the "War on Cancer," there is still no known cause, cure, or method of preventing breast cancer; and

WHEREAS, Mammography is still an important method for breast cancer detection, but it, unfortunately, often fails to identify the disease effectively; and

WHEREAS, The National Cancer Institute reports that even though breast cancer increased 32 percent in the United States between 1982 and 1989, the government spent only $77 million annually researching the prevention of breast cancer during that same time period and despite the fact that Congress spent $500 million in 1995–96 for federal breast cancer research, much more is needed to fund research intended to finding a cure and a means of preventing breast cancer adequately; and

WHEREAS, Californians now may support breast cancer research through the California Breast Cancer Research Fund Act, which allows individuals to make a voluntary contribution to support research when filing state income tax returns; and

WHEREAS, Even with the increase in breast cancer awareness, as evidenced by designating October as Breast Cancer Awareness Month and making provisions for people to contribute to the research, breast exam and mammography are still the primary methods of breast cancer detection available to women; and

WHEREAS, All women 40 to 49 years of age should consult about mammograms with their health care providers and all women over 50 years of age should have a regularly scheduled mammogram every year; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Members of the Legislature hereby proclaim October 1998 as Breast Cancer Awareness Month and urge all government officials, businesses, communities, health care professionals, educators, volunteers, and all the citizens of California to reflect on the progress that has been made in advancing our knowledge about breast cancer and to publicly reaffirm the commitment to controlling and curing this disease; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor of the State of California and to the author for appropriate distribution.

RESOLUTION CHAPTER 64

Senate Concurrent Resolution No. 73—Relative to Veterans Boulevard.

[Filed with Secretary of State May 28, 1998.]

WHEREAS, It is fitting to honor the dedication, sacrifice, and service conferred upon the people of California and the nation by the heroic and unselfish efforts of our distinguished war veterans; and

WHEREAS, The City and County of San Francisco Veterans' Affairs Commission has adopted a resolution asking that a suitable public street or highway in San Francisco be named in honor of war veterans; and

WHEREAS, The portion of State Highway Route 1 in the Presidio in the City and County of San Francisco, that terminates at the vicinity of the San Francisco National Cemetery, constitutes a suitable public thoroughfare for honoring California's courageous and deserving veterans; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the segment of State Highway Route 1 in the City and County of San Francisco, commencing at Lake Street and the end of Park Presidio Drive, proceeding through General Douglas MacArthur Tunnel and terminating at the vicinity of the San Francisco National Cemetery, is hereby officially designated as Veterans Boulevard; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements of the state highway system for showing the special designation and, upon receiving donations from nonstate sources sufficient to cover that cost, to erect appropriate plaques and markers showing the special designation; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 65

Senate Concurrent Resolution No. 79—Relative to California Highway Patrol Officers Britt T. Irvine and Rick B. Stovall.

[Filed with Secretary of State May 28, 1998.]

WHEREAS, During the dark, early morning of February 24, 1998, a single patrol unit carrying California Highway Patrol Officers Britt T. Irvine and Rick B. Stovall, who were responding to an emergency call, plunged off the eastbound lane of State Highway Route 166, that had been washed out as a result of heavy rainfall, approximately 12 miles east of State Highway Route 101 along the Cuyama River; and

WHEREAS, The vehicle was carried downstream in the raging Cuyama River waters with mud and debris trapping the officers inside; and

WHEREAS, Subsequently, the officers' patrol unit was first spotted upside down in the mud by a California Highway Patrol helicopter; and

WHEREAS, After more than four hours of rescue efforts, it was determined that, tragically, Officers Irvine and Stovall were deceased; and

WHEREAS, Officer Britt T. Irvine was born in Denver, Colorado, and he was 40 years old and had been a uniformed officer of the Department of the California Highway Patrol since May of 1983; and

WHEREAS, Officer Irvine was assigned to the El Centro, San Jose, and Marin areas before his assignment to Santa Maria in September of 1990; and

WHEREAS, Officer Irvine leaves behind two stepsons and one stepdaughter and his parents; and

WHEREAS, Officer Rick B. Stovall was born in Crescent City, California, and he was 39 years old and was appointed as an officer of the department in August of 1980; and

WHEREAS, Officer Stovall was assigned to the West Los Angeles, Santa Barbara, Crescent City, and San Luis Obispo areas before his assignment to Santa Maria in February of 1991; and

WHEREAS, Officer Stovall leaves behind his wife, son, and daughter, and his father, who is a retired California Highway Patrol officer; and

WHEREAS, Both Officers Irvine and Stovall were known for their dedication to the Department of the California Highway Patrol and to the protection of the citizens of our state; and

WHEREAS, It is appropriate that the portion of State Highway Route 166 from Route 101 near Santa Maria to Route 33 in the Cuyama Valley be dedicated to the memory of Officer Britt T. Irvine and Officer Rick B. Stovall who made the ultimate sacrifice in their service to the people of California; now, therefore, be it

Resolved, by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby dedicates the portion of State Highway Route 166 from Route 101 near Santa Maria to Route 33 in the Cuyama Valley to the memory of California Highway Patrol Officers Britt T. Irvine and Rick B. Stovall; and be it further

Resolved, That that portion of State Highway Route 166 shall be known as the CHP Officers Irvine and Stovall Memorial Highway ; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of erecting the appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the special designation, and upon receiving donations from nonstate sources covering the cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Department of Transportation and to the author for appropriate distribution.

RESOLUTION CHAPTER 66

Senate Concurrent Resolution No. 91—Relative to Missing Children's Week.

[Filed with Secretary of State May 28, 1998.]

WHEREAS, Every 40 seconds a child is declared missing in the United States, and approximately 400,000 child abductions are reported nationwide each year; and

WHEREAS, In 1996, 9,354 children were missing in California, of which 56 children were abducted by strangers, 929 children were missing under suspicious circumstances, 2,733 children were abducted by a parent or family member, 5,153 children were missing under unknown circumstances, and 483 children were lost; and

WHEREAS, Missing children may suffer from long-term or permanent trauma as a result of their experience; and

WHEREAS, Nonfamily abductions have the highest risk of homicide and are more likely to result in sexual and physical assaults on the child victims; and

WHEREAS, The majority of families of missing children experience substantial psychological consequences and emotional distress; and

WHEREAS, National "Missing Children's Day" is May 25; and

WHEREAS, It is important to bring attention to the staggering number of children who are abducted each year so that we can do everything possible to protect our children from being abducted and to locate children that are missing; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby designates the week of May 25th as "Missing Children's Week" in the State of California; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 67

Assembly Concurrent Resolution No. 144—Relative to Camp Fire Boys and Girls.

[Filed with Secretary of State June 1, 1998.]

WHEREAS, Camp Fire Boys and Girls was founded in 1910 by Dr. Luther Gulick and his wife Charlotte; and

WHEREAS, Camp Fire Boys and Girls serves over 670,000 youths every year; and

WHEREAS, Camp Fire Boys and Girls has for 88 years provided the youth of America with camping and outdoor activities that help develop a child's socialization skills as well as an appreciation and commitment to the natural environment; and

WHEREAS, Camp Fire Boys and Girls recognizes and supports the roles of family and community in the development of youth; and

WHEREAS, Camp Fire Boys and Girls values children and youth and recognizes them as contributors to society by honoring their journey from birth to adulthood; and

WHEREAS, Camp Fire Boys and Girls fosters the development from dependence, to independence, to interdependence; and

WHEREAS, Camp Fire Boys and Girls provides self-reliance courses that let children learn to handle threats to their safety, to take care of themselves in specific situations, and to provide service in their communities; and

WHEREAS, Camp Fire Boys and Girls has afterschool youth development programs that provide children with a safe, supportive environment where they can benefit from relationship with adults who act as role models; and

WHEREAS, Camp Fire Boys and Girls strives to be a contemporary, inclusive coeducational youth development organization providing programs for children and youth that develop personal life skills, social responsibility, healthy lifestyles, and leadership; and

WHEREAS, Camp Fire Boys and Girls provides a fun and friendly atmosphere where learning can take place; now, therefore be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature congratulates the Camp Fire Boys and Girls and declares that the month of May 1998 be recognized as Camp Fire Boys and Girls Month in California.

RESOLUTION CHAPTER 68

Assembly Concurrent Resolution No. 151—Relative to California Mental Health Month.

[Filed with Secretary of State June 1, 1998.]

WHEREAS, Mental illness will strike one in four Californians, without regard to age, gender, race, ethnicity, religion, political party, or economic status; and

WHEREAS, One in five children suffer from a diagnosable mental, emotional, or behavioral disorder and one in 10 have a more serious disorder which, if left untreated, can lead to school failure, substance abuse, and, tragically, even suicide; and

WHEREAS, All mental disorders collectively make mental illness the most pervasive health problem in America today, more common than cancer, lung disease, and heart disease combined; and

WHEREAS, Mental illnesses today are treatable, and the great majority of people who seek professional help are successfully treated; and

WHEREAS, Most health insurance plans impose discriminatory restrictions and limits on mental health care, and as a result, many Californians spend thousands of dollars for out-of-pocket health care expenses, or worse, forego treatment; and

WHEREAS, Economic studies reported by the RAND Corporation and the National Institute of Mental Health in 1997 show that equitable insurance coverage for mental illnesses can be provided in a cost-effective manner when the benefits are well managed; and

WHEREAS, Treatment efficacy for mental illnesses is favorable when compared to treatment for common physical ailments; and

WHEREAS, When left untreated, mental illnesses cost the American economy $63 billion each year in lost productivity and worker absenteeism. Depression alone costs American businesses $43.7 billion annually in direct and indirect expenses according to a 1990 study by the Massachusetts Institute of Technology; and

WHEREAS, Most recent medical research shows severe mental illnesses including schizophrenia, schizoaffective disorder, bipolar disorder or manic-depressive illness, depressive disorders, panic disorder, pervasive development disorder, or autism, are brain disorders that can be effectively treated with the latest psychotropic drugs; and

WHEREAS, Each year, approximately 4 million Californians suffer from an anxiety disorder, the most common mental illness in this state, experiencing spontaneous and repeated panic attacks, endlessly checking or rechecking their actions, or feeling constant, unrealistic worry about every day occurrences and activities; and

WHEREAS, Anxiety disorders include panic disorder, generalized anxiety disorder, social phobia, obsessive compulsive disorder, and

posttraumatic stress disorder. Symptoms may appear for no apparent reason, and may inexplicably reach overwhelming levels, dramatically reducing or eliminating a person's ability to function; and

WHEREAS, The National Institute of Mental Health has found that at least two-thirds of our elderly nursing home residents are diagnosed with a mental illness, such as major depression; and

WHEREAS, An estimated 10 to 27 percent of stroke survivors develop a clinical depression; and

WHEREAS, Numerous studies have indicated that up to one-half of all visits to primary care physicians are due to conditions caused or exacerbated by mental or emotional issues; and

WHEREAS, In 1997, the United States Center for Mental Health Services estimated that 9 to 13 percent of our youth aged 9 to 17 years, suffer from a serious emotional disturbance, such as depression. Sadly, the majority of childhood depressions go unrecognized and untreated; and

WHEREAS, Many communities throughout this state now recognize the first week in May as Children's Mental Health Week, the purpose of which is to disseminate information about the needs of children with emotional and behavioral disorders and their families. The 1998 theme for Children's Mental Health Week is "Give Them a Chance"; and

WHEREAS, The California Mental Health Association and its partners sponsor Mental Health Month each year in May, in order to raise public awareness of mental health issues, mental illnesses, their causes and treatments, and insurance discrimination against people with mental illnesses; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims May 1998 as Mental Health Month in California, to increase our understanding of mental illnesses, and the need for appropriate and equitable treatment services for all people who suffer from mental illness.

RESOLUTION CHAPTER 69

Assembly Concurrent Resolution No. 158—Relative to National Drug Court Week.

[Filed with Secretary of State June 1, 1998.]

WHEREAS, Criminal justice, treatment, law enforcement, education, and other community partners come together in drug courts to fight against drug abuse and crime; and

WHEREAS, Drug courts represent one unique approach among many meritorious approaches to combating the criminal and social problems associated with drug abuse; and

WHEREAS, The judges, prosecutors, defense attorneys, treatment and rehabilitation professionals, law enforcement and correctional personnel, educators, and community leaders dedicated to the drug court initiative have made a profound impact through their hard work and commitment to their communities; and

WHEREAS, Drug court programs combine intensive judicial supervision, mandatory drug testing, escalating sanctions, and treatment to help eligible nonviolent criminals break the cycle of drug addiction and concomitant crime; and

WHEREAS, The California drug court initiative has grown from one drug court in 1991 to 69 currently, with many more in the planning stages; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the California State Legislature hereby supports the celebration of National Drug Court Week in California from June 1 through June 7, 1998, recognizing the work of all practitioners who have come together to make drug courts work for the benefit of Californians and the contributions that drug courts have made, and continue to make, as part of California's overall strategy to reduce drug usage and crime.

RESOLUTION CHAPTER 70

Senate Concurrent Resolution No. 95—Relative to California Small Business Week.

[Filed with Secretary of State June 1, 1998.]

WHEREAS, The President of the United States, by proclamation, will designate the week of May 31, 1998, through June 6, 1998, as national Small Business Week in recognition of the outstanding contributions of the owners of small businesses to our nation; and

WHEREAS, Close to 98 percent of all California business establishments have fewer than 100 employees; and

WHEREAS, About one-half of all California workers are employed in small businesses; and

WHEREAS, There were 92,900 new small business employees in California in 1996; and

WHEREAS, More than one-third of the new jobs created in California in 1996 were in small businesses; and

WHEREAS, Twenty-five percent of the top-rated 100 growth companies are based in California; and

WHEREAS, Ninety-four of the nation's 500 fastest growing private companies are in California; and

WHEREAS, California is home to 73 of the 200 fastest growing electronics companies in the nation; and

WHEREAS, California's small businesses have a vital role in expanding our state's trade relationships with Pacific Rim countries; and

WHEREAS, Small business people possess the dedication and entrepreneurial spirit to develop and market new technologies, thereby bringing more capital into the business market and further strengthening our economy; and

WHEREAS, The innovation, diversity, competitive strength, job generation, and quality of life that small businesses bring to our economy are vital elements of our state's long-term economic health; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Governor is hereby requested, in conjunction with the national designation thereof, to proclaim the week of May 31, 1998, through June 6, 1998, as California Small Business Week, in special recognition of the contributions that the owners of small businesses have made, and will continue to make, in our state; and be it further

Resolved, That the Chief Clerk of the Senate transmit a copy of this resolution to the Governor of this state.

RESOLUTION CHAPTER 71

Senate Concurrent Resolution No. 89—Relative to America's Filipino Soldiers.

[Filed with Secretary of State June 5, 1998.]

WHEREAS, World War II is the most important period in the history of Filipino-Americans, the time when a war in the Pacific and a great calamity in their homeland brought them together for the most important fight of their lives for America; and

WHEREAS, The participation of Filipino-Americans in World War II changed forever the way they see themselves and the way most Americans think of them; and

WHEREAS, On December 7, 1941, America was attacked when the Imperial Japanese Naval Forces simultaneously bombed Pearl Harbor, Hawaii, then a territory of the United States, and the Philippines, a commonwealth of the United States; thus, plunging the United States into World War II; and

WHEREAS, Because of their unique status as "nationals," Filipino immigrants in the United States were denied the right to join the United States Armed Forces; and

WHEREAS, With the persistence of Filipino Nationals, on January 2, 1942, President Franklin D. Roosevelt issued an executive order allowing them to serve in the United States Armed Forces in a specially organized fighting unit; and

WHEREAS, Filipinos throughout the United States responded to the call to arms, coming from the laboring fields in domestic areas, farms, canneries, factories, and fisheries, thus, giving birth to the 1st Filipino Battalion, United States Army, which was formed at San Luis Obispo, California on April 1, 1942; and

WHEREAS, The 1st Filipino Battalion then grew into the 1st Filipino Infantry Regiment, United States Army, by July 13, 1942; and

WHEREAS, The 2nd Filipino Infantry Regiment, United States Army, was formed on October 2, 1942; and

WHEREAS, Seven thousand Filipino volunteers were trained in the following California camps: Fort Ord, Hunter Ligget, Camp Beale, Camp Cook, and Camp Kohler; and

WHEREAS, Thousands were sworn in as citizens in mass ceremonies in California and were fondly dubbed as "California's Own"; and

WHEREAS, Upon learning of these organized units, the Allied Supreme Commander of the Pacific Far East, General Douglas MacArthur, needing "eyes and ears" in the Philippines, selected 800 men forming the 1st Reconnaissance Battalion (Special Forces) for special training in Australia; and

WHEREAS, These men were secreted into the Philippines by submarines and completed more than 280 missions to infiltrate enemy lines, collecting and sending vital military data on ship and troop movements, and to train guerrillas in preparation for General MacArthur's return to the Philippines; and

WHEREAS, In these endeavors, the casualties for the 1st Reconnaissance Battalion were: 164 killed, 6 wounded, 178 missing, and 75 captured; and

WHEREAS, All members of the 1st Reconnaissance Battalion were awarded the Bronze Star with valor; and

WHEREAS, The 1st and 2nd Filipino Infantry Regiments, United States Army, arriving in New Guinea for advanced training, were looked upon as a valuable source of specialized soldiers, resulting in more volunteers to other special units of the 6th and 8th Armies for counterintelligence, civil-affairs assignments, and rescue missions, such as the freeing of American prisoners of the infamous "Bataan Death March," who were held captive in Cabanatuan, and carrying out the "Shangri-la Mission," rescuing United States Women Army Corp personnel whose plane was downed in the jungles of New Guinea; and

WHEREAS, Other soldiers fought as a unit in cleanup operations in Leyte, Samar, and other islands of the Malay Archipelago; and

WHEREAS, Upon the cessation of hostilities, the 2nd Filipino Infantry Regiment was disbanded in Manila, the 1st Reconnaissance Battalion (Special Forces) was disbanded in New Guinea, and the 1st Filipino Infantry Regiment was returned to the United States for deactivation in California on April 9, 1946; and

WHEREAS, These Filipino war veterans returned home proud to have contributed to the cause of democracy and freedom; and

WHEREAS, With the laws on their side as citizens with veterans' rights, and the "GI Bill," these veterans began to forge their lives as citizens, making contributions to their communities and the nation by serving as entrepreneurs, professional and public leaders, and attaining better lives for themselves and their families; and

WHEREAS, Those men who returned to the United States with Filipina war brides established a new generation of Filipino families in this country; and

WHEREAS, Since very little is known about these veterans, who are now in their 80's and 90's, recognition of their "untold story" should become public to the community and to nation at large; and

WHEREAS, To acknowledge their experiences, exploits, and heroic deeds, a 60-minute film documentary is in the making entitled "An Untold Triumph: America's Filipino Soldiers"; and

WHEREAS, When completed, the film will become available to the vast television audience and to schools throughout the nation as another example of a great American story; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature, in this year of 1998, the celebratory year of the 100th Anniversary of Philippine Independence from Spain and its continued celebration of American-Philippine independence friendship, hereby recognizes the heroic deeds of the 1st and 2nd Filipino Infantry Regiments, United States Army, as "California's Own," and supports documentation of their story in the film "An Untold Triumph: America's Filipino Soldiers"; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 72

Assembly Concurrent Resolution No. 160—Relative to Affordable Housing Week.

[Filed with Secretary of State June 9, 1998.]

WHEREAS, Decent, safe, and affordable housing is one of the basic necessities of life; and

WHEREAS, Affordable housing is of vital importance to the health and well-being of California's residents; and

WHEREAS, Hundreds of thousands of Californians live in overcrowded, substandard, and otherwise inadequate housing; and

WHEREAS, Hundreds of thousands more are paying over 30 percent, and many over 50 percent, of their income for housing and are at significant risk of losing their housing and becoming homeless; and

WHEREAS, Thousands of units of affordable housing have been built by nonprofit developers in the state; and

WHEREAS, These affordable housing units are well managed, well maintained, and are contributing to the communities in which they are located; and

WHEREAS, East Bay Housing Organizations, the Sacramento Housing Alliance, and the Non-Profit Federation for Housing and Community Development have organized events during Affordable Housing Week to acknowledge the need for, and contributions of, affordable housing; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of June 7, 1998, to June 14, 1998, inclusive, is proclaimed as Affordable Housing Week in California; and be it further

Resolved, That the Legislature calls upon all Californians to learn about and honor the contributions of affordable housing by participating in activities held throughout the week to commemorate this observance; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 73

Senate Joint Resolution No. 41—Relative to marine weather buoys.

[Filed with Secretary of State June 12, 1998.]

WHEREAS, The system of marine weather buoys off the West Coast of the United States provides accurate, timely, and localized information on sea surface and wind conditions; and

WHEREAS, The information on sea surface and wind conditions is critical to marine operations, including commercial and recreational fishing, recreational boating, tug and barge traffic, and marine shipping; and

WHEREAS, The information on sea surface and wind conditions is invaluable to the timely and effective containment and remediation of offshore oil spills; and

WHEREAS, The loss of information from marine weather buoys has increased the danger of marine operations; and

WHEREAS, Both the Congress and the President have indicated concern and support for improved safety at sea through the passage of the Fishing Vessel Safety Act and other measures; and

WHEREAS, Despite federal support for marine safety, federal funding for the operation and replacement of marine weather buoys has been reduced or, in some cases, eliminated; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That Congress is hereby memorialized to work together with the National Oceanic and Atmospheric Administration and the National Weather Service to enact legislation that would provide funding for the implementation of a permanent marine weather buoy system to protect marine safety, lives, and property, and to ensure that opportunities for marine economic and recreational activities are preserved; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the President pro Tempore of the Senate, the Speaker of the House of Representatives, and each Senator and Representative from California in the Congress of the United States, the National Oceanic and Atmospheric Administration, and the National Weather Service.

RESOLUTION CHAPTER 74

Assembly Joint Resolution No. 61—Relative to the federal naturalization process.

[Filed with Secretary of State June 15, 1998.]

WHEREAS, The attainment of United States citizenship is recognized by many legal immigrants as a key to full participation in civic life; and

WHEREAS, There presently exists a backlog of 700,000 naturalization applications in California awaiting processing—some for as long as two years; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California encourages the Commissioner of the Immigration and Naturalization Service, the President, and the Congress of the United States to ensure that available resources are directed, and any additional funds as needed

are appropriated, in order to eliminate, within 10 months, the current backlog in naturalization applications; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the Commissioner of the Immigration and Naturalization Service, the President, and the Congress of the United States to ensure that, without harm to the integrity of the naturalization process, all future applicants for naturalization will receive a determination within six months of their date of application; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the Commissioner of the Immigration and Naturalization Service, the President, and the Congress of the United States to refrain from the consideration of any increase in naturalization fees until such time as the present backlog is eliminated and resources are committed to ensure that future applications will be processed within six months of their date of application; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Commissioner of the Immigration and Naturalization Service, the President and the Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 75

Assembly Concurrent Resolution No. 87—Relative to American Flag Month.

[Filed with Secretary of State June 16, 1998.]

WHEREAS, For more than two centuries the American flag has been a banner of hope for generation after generation of Americans; and

WHEREAS, The flag is the symbol of a country that has grown from 13 colonies to a united nation of 50 sovereign states; and

WHEREAS, The first flag of the United States was authorized by Congressional Resolution on June 14, 1877, and in 1949, the United States Congress officially designated June 14th of each year as National Flag Day, to be observed by the display of the flag and appropriate ceremonies; and

WHEREAS, The Pledge of Allegiance to the flag was first used in 1892, was made official by the United States Congress in 1945, and through the years has been recited to reaffirm our love and loyalty to our flag and country and to the ideals that have made America a great nation; and

WHEREAS, The Legislature of the State of California recognizes and appreciates the symbolism represented when our flag is proudly displayed and celebrated; now therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby declares the 30 days from June 14, 1998, to July 14, 1998, inclusive, as American Flag Month in the State of California; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Governor.

RESOLUTION CHAPTER 76

Assembly Concurrent Resolution No. 168—Relative to June is Dairy Month.

[Filed with Secretary of State June 22, 1998.]

WHEREAS, "June is Dairy Month" is a national event with special meaning for Californians who enjoy the benefits of living in the top milk-producing state in the nation; and

WHEREAS, Dairy products are the largest of the 250 agricultural commodities produced in California, generating over $3 billion in sales annually; and

WHEREAS, California produces a wide variety of high quality milk products, such as cheese, butter, ice cream, yogurt, cottage cheese, sour cream, and powdered milk, and has been the number one dairy state in the nation since 1994; and

WHEREAS, In California the production of dairy products continues to set new growth records; and

WHEREAS, In 1997, the 2,300 hardworking dairy families in the Golden State increased milk production to a record 27.579 billion pounds, an increase of 6.8 percent over 1996, and cheese production increased by 38 percent in the five years from 1993 to 1997; and

WHEREAS, Nearly 40 percent of California's milk supply is used for cheese production, producing over 120 varieties and types of cheese, up from 70 varieties three years ago; and

WHEREAS, In addition to traditional cheese, the number of specialty cheeses produced in California has increased by 70 percent in the past three years; and

WHEREAS, Nearly all the cheese produced in California has been qualified to carry the Real California Cheese seal, which guarantees consumers that the cheese is all natural, made from California cows' milk, and is produced according to stringent production standards; and

WHEREAS, Consumers look for the Real California Cheese seal because it represents quality; and

WHEREAS, California's production of nonfat dry milk accounts for one-third of the country's nonfat dry milk supply, and the Golden State is the largest producer of nonfat dry milk in the world; and

WHEREAS, Nonfat dry milk is an ideal world trade product due to economic shipping and a long shelf life, and is another example of how dairy products contribute to the agricultural economy of the state; and

WHEREAS, Milk is a valuable food that is considered a necessary part of good health and a balanced diet; and

WHEREAS, California milk provides the best source of absorbable calcium, and one serving provides the highest content of essential vitamins and minerals such as magnesium, potassium, protein, riboflavin, and vitamins A, D, and B-12; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the month of June 1998, is hereby proclaimed "June is Dairy Month"; and be it further

Resolved, That all Californians are encouraged to proudly celebrate the state's success as the largest producer of dairy products in the nation; to recognize the unprecedented growth and innovations by the industry, making it a valuable asset to the state's business and trade economy; and to laud the industry's ongoing commitment to quality and the production of food sources that are wholesome, rich in vitamins and minerals, and that continue to remain popular over time; and be it further

Resolved, That the Chief Clerk of the Assembly shall transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 77

Assembly Constitutional Amendment No. 30—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by repealing and adding Section 6 of Article XIX thereof, and by adding Article XIX A thereto, relating to transportation.

[Filed with Secretary of State June 25, 1998.]

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1997–98 Regular Session commencing on the second day of December 1996, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended as follows:

First—That Section 6 of Article XIX thereof is repealed.

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.

RESOLUTION CHAPTER 78

Assembly Concurrent Resolution No. 147—Relative to child passenger safety.

[Filed with Secretary of State June 25, 1998.]

WHEREAS, Automobile collisions in the United States are the leading cause of unintentional injury deaths for children under 16 years of age, accounting for 40 percent of all unintentional injury deaths and taking the lives of 195 California youngsters under 16 years of age annually; and

WHEREAS, Local and statewide public education efforts have proven successful in increasing child safety seat compliance to an all-time high of 89.6 percent; and

WHEREAS, Research indicates that four out of five child safety seats are used incorrectly; and

WHEREAS, Continued efforts must be supported to inform parents of the most effective passenger safety practices, such as having children ride in the back seat of the vehicle because it is the

safest place for children of any age to ride, especially those 12 years of age and under; and

WHEREAS, Seventy-one percent of the deaths and 66 percent of the injuries in motor vehicle collisions could be eliminated if every infant and toddler were in an appropriate child safety seat on every ride; and

WHEREAS, While many educational and enforcement efforts target the proper restraints for infant and toddler passengers, increased efforts must also target the proper restraints for children passengers, 4 through 15 years of age who are still at great risk; and

WHEREAS, The California Coalition for Children's Safety and Health, funded by contributions from the Association of California Life Insurance Companies, the American Council of Life Insurance, Health Net, Pacific Life, State Farm Insurance Companies, and the United Services Automobile Association (USAA), have cosponsored with the Assembly Transportation Committee, an informational hearing on child passenger safety to increase awareness of this important public health issue; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California encourages the judiciary, law enforcement, the public health and health care communities, passenger safety specialists, and child advocates to continue their diligent efforts to ensure the safety of California's children through enforcement and public education of our child passenger restraint laws and effective passenger safety practices; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 79

Senate Concurrent Resolution No. 75—Relative to Stepfamily Day.

[Filed with Secretary of State June 26, 1998.]

WHEREAS, The good health and general well-being of the people of the State of California is enhanced by our strong commitment to supporting the stepfamilies of California in their mission to raise their children, and to create strong family sentiments to support the individual members of the family and to instill in them a sense of responsibility to the other family members; and

WHEREAS, Approximately one-half of all Americans are currently involved in some form of stepfamily relationship and it is predicted by the United States Census Bureau that by 2000, more than one-half of the United States population will be living in stepfamilies rather than entirely blood-related families; and

WHEREAS, California has been blessed by thousands upon thousands of loving stepparents and stepchildren, who are daily reminders of the joy, trials, and triumphs of stepfamily status and of the boundless love which is contained in the bond between all types of parents and children; and

WHEREAS, California is pleased to join with the entire nation in celebrating the many invaluable contributions which stepfamilies have made to enriching the lives and life experiences of the children and parents of America and to strengthening the fabric of American society; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims September 16, 1998, as Stepfamily Day; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 80

Assembly Joint Resolution No. 51—Relative to the establishment of the Internal Revenue Service Reciprocal Refund Offset Program.

[Filed with Secretary of State June 29, 1998.]

WHEREAS, The 1998–99 Governor's budget includes $85 million, beginning with the 1998–99 fiscal year, that is predicated on the assumption that the United States Congress will act to establish a program under which the Internal Revenue Service and the United States Treasury Department may offset or withhold a federal tax refund to satisfy legally enforceable, past due state income tax obligations; and

WHEREAS, There are currently 31 states, including California, and the District of Columbia, that offset state income tax refunds to satisfy delinquent federal tax obligations under a cooperative arrangement between the state tax agency and the Internal Revenue Service; and

WHEREAS, California has been participating in the state offset arrangement since January 1991 and collected $27.5 million during the 1995–96 fiscal year and $28 million during the 1996–97 fiscal year and will collect $29 million during the 1997–98 fiscal year for the federal government; and

WHEREAS, Permitting federal refunds to be offset for state income tax debts would further existing cooperative efforts between the Internal Revenue Service and state taxing agencies and would be an effective method of collecting delinquent debts owed to the states; and

WHEREAS, According to the Federation of Tax Administrators, a reciprocal tax program at the federal level would increase state receipts by an estimated $200 million annually in the early years of implementation. Of this amount, it is estimated that California would receive revenue in the range of $85 million annually; and

WHEREAS, A reciprocal program could also benefit federal receipts because it would likely lead the remaining 10 income tax states to participate in the program; and

WHEREAS, H.R. No. 1730, a measure authored by Congresswoman Nancy Johnson (D-Connecticut), is currently being considered by Congress; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to establish a program to offset or withhold federal tax refunds to satisfy legally enforceable, past due state income tax obligations; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Acting Commissioner of the Internal Revenue Service; and to the Secretary of the Treasury.

RESOLUTION CHAPTER 81

Senate Joint Resolution No. 43—Relative to credit unions.

[Filed with Secretary of State July 1, 1998.]

WHEREAS, House of Representatives Bill No. 1151, known as the "Credit Union Membership Access Act," is currently pending in the United States Senate, updates federal law in order to restore the rights of credit unions to add members from outside their core membership group; and

WHEREAS, House of Representatives Bill No. 1151 passed the United States House of Representatives on April 1, 1998, on a vote of 411-8; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes California's United States Senators Barbara Boxer and Dianne Feinstein, and the United States Senate, to support quick enactment of legislation protecting the rights of California residents to join credit unions; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the President of the United States to immediately sign that legislation into law; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President of the United States, and to Senators Barbara Boxer and Dianne Feinstein.

RESOLUTION CHAPTER 82

Assembly Joint Resolution No. 63—Relative to the Elk Hills Naval Petroleum Reserve.

[Filed with Secretary of State July 2, 1998.]

WHEREAS, The Elk Hills Naval Petroleum Reserve contains within it two sections of school lands and, upon sale, the value of the school lands is to become available to the State of California for the purposes of retired teacher benefits; and

WHEREAS, The federal government, in the 1996 Defense Authorization Act, recognized and provided a means to adjudicate California's claim to revenues from the sale of the Elk Hills Naval Petroleum Reserve; and

WHEREAS, The State of California, through the Governor and the Attorney General, have complied with all requirements and have reached agreement with the federal government on the state's claim; and

WHEREAS, The agreement between the Secretary of Energy and the State of California, pursuant to the 1996 Defense Authorization Act, provides that 9 percent of the net sale value will be used for California; and

WHEREAS, The sale has been completed and approximately three hundred twenty million dollars ($320,000,000) is the state's 9 percent share; and

WHEREAS, The funds received from the sale of the Elk Hills Naval Petroleum Reserve will be used to provide retirement benefits to those teachers who have lost most of the value of their pension to inflation; and

WHEREAS, These teachers are mainly over 80 years old and have the lowest pensions from the State Teachers' Retirement System; and

WHEREAS, The federal government and the President have included, within the 1999 fiscal year budget proposals, the sum of thirty-six million dollars ($36,000,000) as the first payment pursuant to the agreement; and

WHEREAS, The State of California believes that the appropriation should be made and honored at the earliest date possible; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California memorializes the President and the Congress of the United States to approve the appropriation included in the 1999 fiscal year proposed energy appropriation in the bill appropriating funds for the support of the Department of the Interior; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 83

Assembly Concurrent Resolution No. 156—Relative to healthy children.

[Filed with Secretary of State July 2, 1998.]

WHEREAS, Every child deserves a happy childhood and the opportunity to grow and develop his or her potential as a productive member of society; and

WHEREAS, Good health, including good mental health, is a necessary condition for the successful growth and development of children; and

WHEREAS, A key factor in contributing to the health of children is access to preventative health care, specialty medical treatment, and rehabilitative services; and

WHEREAS, An estimated 1.7 million children in California do not have adequate health care coverage; and

WHEREAS, During 1998, several public and private initiatives will significantly affect health services for children and potentially improve their access to health services, including the California Healthy Families Program; and

WHEREAS, Efforts are underway throughout California involving state agencies, schools, service groups, and other organizations to ensure that these initiatives have a positive impact on the health of our children; and

WHEREAS, The Legislature encourages courts, municipalities, health organizations, businesses, religious organizations, and other interested individuals and groups to engage in efforts to improve the health of children in California; and

WHEREAS, These efforts deserve the unqualified support of all governmental, civic, and community leaders within California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature proclaims the year 1998 to be the Year of Healthy Children in California; and be it further

Resolved, That all appropriate state departments, county departments, agencies, and advisory bodies are urged to work to support the efforts initiated during 1998 to improve the health of children in California.

RESOLUTION CHAPTER 84

Assembly Concurrent Resolution No. 157—Relative to the Fourth of July.

[Filed with Secretary of State July 2, 1998.]

WHEREAS, Two hundred twenty-two years ago, on June 11, 1776, the Continental Congress appointed a committee to draft a document proclaiming American sovereignty, naming Thomas Jefferson, John Adams, Benjamin Franklin, Roger Sherman, and Robert Livingston to the committee; and

WHEREAS, The committee, with Jefferson doing by far most of the work, finished its task in 17 days and produced the Declaration of Independence, which was published on July 4, 1776; and

WHEREAS, The Declaration of Independence is a document that Pauline Maier has described as "...an organic expression of an emerging polity rooted in centuries of English law, growing out of the colonial experience and flowering in American aspirations toward life, liberty, and the pursuit of happiness," and that Abraham Lincoln called "the father of all moral principles"; and

WHEREAS, The fact that the Fourth of July is called Independence Day could explain why the Fourth has always been America's favorite holiday, because Independence Day is our birthday and we celebrate birthdays; and

WHEREAS, There have always been speeches on this holiday and usually a parade, and fireworks were added a long, long time ago, followed by picnics and flags and bunting, and today we have floats and costumes, food, game booths, arts and crafts, and entertainment, and games, barbecues, gunny sack races, egg races, one- and three-legged hopping contests, and bicycle contests, to name a few; and

WHEREAS, One president, Calvin Coolidge, was born on the Fourth of July, and three presidents, two of whom signed the Declaration of Independence, died on the Fourth of July: Thomas Jefferson, John Adams, and James Monroe; and

WHEREAS, Outside of the fun and all the celebration, the Fourth of July is truly one of those moments when we remember the origins

of our freedoms, a time when we understand our rights and responsibilities, and a time when we pay tribute to the Declaration of Independence, the document that led to a way of life envied all over the world; and

WHEREAS, We forget just how much those who signed the document stood to lose and what great risks they took as they put their fortunes and their lives on the line, doing so in the face of those who told them that they ought to be cautious, but since they were brave, daring men, freedom and justice far outweighed caution in their minds and in their acts; and

WHEREAS, The Declaration of Independence reflects our nation's founding and heritage, as alive and vital today as it was 222 years ago; now, therefore, be it

Resolved, By the Assembly of the State of California, the Senate thereof concurring, That July 4, 1998, be fully observed in this state as Independence Day; and be it further

Resolved, That the Legislature of the State of California encourages all Californians to participate in the appropriate programs and activities and celebrations in recognition of our nation's birthday; and be it further

Resolved, That all Californians are urged to take a moment to remember those brave men who signed the Declaration of Independence 222 years ago; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 85

Assembly Concurrent Resolution No. 162—Relative to Sober Graduation.

[Filed with Secretary of State July 2, 1998.]

WHEREAS, May and June are the traditional months to celebrate the completion of high school and the commencement of adult life for graduating seniors statewide; and

WHEREAS, High school graduation is a milestone marked by proms, parties, and other celebrations; and

WHEREAS, Unfortunately, these celebrations have all too often been occasions for the illegal consumption of alcohol by underage high school pupils, too many of whom drive a motor vehicle on public roadways; and

WHEREAS, This behavior has frequently ended in the tragic death or injury of those involved, as well as of innocent motorists, passengers, and pedestrians; and

WHEREAS, In 1985, the Department of the California Highway Patrol initiated an innovative new program called Sober Graduation as a way of providing teenagers with a safe way to celebrate graduation; and

WHEREAS, Since its inception, Sober Graduation parties and activities have saved the lives of hundreds of California motorists and passengers by giving young, end-of-the-school-year celebrants an alcohol-free alternative for celebrating; and

WHEREAS, Sober Graduation has proven to be a safe and effective way of celebrating graduation and marking the end of the school year; and

WHEREAS, Community and parent-sponsored Grad Nite programs throughout the state support and complement the philosophy and values that are the heart and soul of all Sober Graduation endeavors; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature encourages all parents, school teachers and administrators, law enforcement agencies, and community leaders to continue their efforts to provide Sober Graduation activities in 1998 for the maximum number of high school graduates, their friends, and school associates.

RESOLUTION CHAPTER 86

Assembly Concurrent Resolution No. 167—Relative to California Pear Day.

[Filed with Secretary of State July 2, 1998.]

WHEREAS, California agriculture is among the most diverse in the world and the jobs associated with the industry are a pillar of the state's economy, generating an estimated $22 billion in annual revenues and a multiplier effect of $65 billion; and

WHEREAS, Bartlett pears share in California agriculture's rich, long history dating back 150 years when the first pear trees came west in covered wagons bound for the Great California Gold Rush; and

WHEREAS, Bartlett pears have been here since statehood and thus contribute to California's Sesquicentennial Celebration; and

WHEREAS, Bartlett pears have also distinguished themselves throughout Western civilization, having impressed the legendary Greek poet Homer, who, in the eighth century B.C., described pears as "a gift of the gods;" and

WHEREAS, Bartlett pears are highly nutritious, providing a rich source of fiber, vitamins, and minerals with virtually no cholesterol or fat; and

WHEREAS, Bartlett pears are the most popular pear variety nationwide, and 60 percent of them, 285,000 tons raised on 18,500 acres, are grown in California; and

WHEREAS, Bartlett pears represent the largest agricultural crop in Lake County and Mendocino County, as well as the third largest crop in Sacramento County; and

WHEREAS, More than 300 California farm families, many of whom have grown pears for generations, have dedicated themselves with pride to raising the nation's finest pears for 150 years, harvesting from July through September, with the peak of the season coming in August; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature recognizes the historical, nutritional, and economic importance of pears, as well as the contributions of pear growers and the California Pear Advisory Board, by declaring August 12, 1998, California Pear Day.

RESOLUTION CHAPTER 87

Senate Concurrent Resolution No. 78—Relative to high-occupancy vehicle lanes.

[Filed with Secretary of State July 8, 1998.]

WHEREAS, Interstate 80 between the Carquinez Bridge and the San Francisco-Oakland Bay Bridge is a vital transportation corridor and is the most congested freeway in the Bay Area; and

WHEREAS, The Department of Transportation has added a new high-occupancy vehicle (HOV) lane to alleviate the congestion in order to promote the welfare, safety, and convenience of motorists; and

WHEREAS, Certain cities along the Interstate 80 corridor threatened litigation to prevent this freeway-widening project from proceeding and demanded certain concessions in order to drop the threat of this lawsuit; and

WHEREAS, One of these concessions was to create a "demonstration project" that would restrict the use of the west-bound segment of the new HOV lane, between the Distribution Center and the Richmond Parkway, to vehicles with three or more persons during the hours of 5 a.m. to 7 p.m.; and

WHEREAS, This concession has resulted in this HOV lane having the longest and most restrictive hours of operation in the Bay Area; and

WHEREAS, All other Bay Area HOV lanes are restricted to use by carpoolers during peak congestion hours only; and

WHEREAS, Most other Bay Area HOV lanes may be used by vehicles with two or more persons; and

WHEREAS, The public has expressed confusion over the discrepancies and inconsistencies of the Interstate 80 HOV lane's hours of operation and the required number of occupants for each vehicle; and

WHEREAS, The Department of the California Highway Patrol is concerned about the safety risks these confusions may cause; and

WHEREAS, Bay Area courts have expressed concern over the inconsistency of HOV lanes, and have indicated that they may dismiss HOV-lane citations if the inconsistencies are shown to cause confusion for motorists; and

WHEREAS, The justification for this demonstration project is not based on any established criteria, extensive research, or scientific data; and it has not been effectively demonstrated that operating HOV lanes during noncommute hours encourages carpooling or reduces congestion; and

WHEREAS, The demonstration project assurances adopted by the Metropolitan Transportation Commission state that the project shall continue for a period of 18 months, unless the operation demonstrates that the operational integrity is seriously impaired; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Department of Transportation, the Metropolitan Transportation Commission, and the Department of the California Highway Patrol are hereby requested to jointly conduct a thorough and comprehensive study of the demonstration project, to be completed as soon as feasible, but not later than July 1, 1998 ; and be it further

Resolved, That the study analyze the usage of the new HOV lane and consider whether the restrictions significantly change behavior and encourage carpooling during both commute and noncommute hours; and be it further

Resolved, That in weighing the costs of the demonstration project, the study consider the possible confusion to motorists of having a widely disparate number of hours of operation for the HOV lane under this demonstration project compared to other HOV lanes in the Bay Area; the possible confusion to motorists of having disparate requirements for the number of people per vehicle compared to most HOV lanes in the Bay Area; the risk that confusion and inconsistency may undermine the public's acceptance of HOV lanes; the appropriateness of enacting longer HOV-lane hours without established criteria or extensive research; and the enforcement and safety concerns raised by the Department of the California Highway Patrol; and be it further

Resolved, That in weighing the benefits of the demonstration project, the study consider the travel-time savings and reductions in

congestion of the corridor for both commute and noncommute hours; and be it further

Resolved, That the demonstration project be terminated immediately if the report concludes that its costs outweigh its benefits; and be it further

Resolved, That the Department of Transportation make available to the public copies of the study; and be it further

Resolved, That in order to promote statewide consistency and to reduce confusion and safety risks to motorists, the Department of Transportation and the Department of the California Highway Patrol, in consultation with regional transportation agencies, are hereby requested to develop statewide criteria and guidelines upon which to base future decisions concerning the addition of, and operation hours of, HOV lanes; and be it further

Resolved, That the Department of Transportation and the Department of the California Highway Patrol, in consultation with regional transportation agencies, are hereby requested to develop a standardized review process to periodically evaluate the effectiveness of each HOV lane in the state in order to assess whether the lane's objectives are being realized and to make appropriate changes; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Director of Transportation, the Commissioner of the Department of the California Highway Patrol, and the Executive Director of the Metropolitan Transportation Commission.

RESOLUTION CHAPTER 88

Assembly Concurrent Resolution No. 97—Relative to the POW/MIA flag.

[Filed with Secretary of State July 8, 1998.]

WHEREAS, The United States has fought in many wars, and thousands of Americans who served in those wars were captured by the enemy or listed as missing in action; and

WHEREAS, Many of these Americans are still missing and unaccounted for, and the uncertainty surrounding their fates has caused their families to suffer tragic and continuing hardships; and

WHEREAS, As a symbol of the nation's concern and commitment to accounting as fully as possible for all Americans still held prisoner, missing, or unaccounted for by reason of their service in the Armed Forces and to honor the Americans who in future wars may be captured or listed as missing, or unaccounted for, Congress has officially recognized the National League of Families POW/MIA flag (36 U.S.C. Sec. 189); and

WHEREAS, The American people observe and honor with appropriate ceremony and activity the third Friday of September each year as National POW/MIA Recognition Day; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature requests all state agencies that fly the United States and California flags to fly the POW/MIA flag on the following holidays: Armed Forces Day, the third Saturday in May; Memorial Day, the last Monday in May; Flag Day, June 14; Independence Day, July 4; National POW/MIA Recognition Day, the third Friday in September; and Veterans Day, November 11; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the heads of all state agencies.

RESOLUTION CHAPTER 89

Assembly Joint Resolution No. 60—Relative to the 940th Air Refueling Wing, Beale Air Force Base, California.

[Filed with Secretary of State July 9, 1998.]

WHEREAS, The United States Air Force Reserve operational unit, which is now the 940th Air Refueling Wing (940th ARW), has been in the Sacramento Valley since 1963; and

WHEREAS, The 940th ARW, which has been located at various times at Mather Air Force Base, McClellan Air Force Base, and Beale Air Force Base, has a proud tradition of supporting the nation's defense since the 940th ARW's activation; and

WHEREAS, The mission of the 940th ARW is to perform global air refueling and strategic airlift operations, which allow other aircraft to fly far beyond their normal range by overcoming the restrictions imposed by limited onboard fuel capacity; and

WHEREAS, The 940th ARW has participated in many conventional and humanitarian efforts that were undertaken by the Department of Defense and the United Nations, including rebuilding schools in Honduras, providing food and medical supplies to Somalia, and deployment in support of democracy in Haiti; and

WHEREAS, The 940th ARW was the first Air Force Reserve unit to establish ground operations in the Middle East as a part of Desert Shield when it deployed hundreds of United States military reservists to Saudi Arabia in August 1991, just days after the invasion of Kuwait; and

WHEREAS, The 940th ARW continues to support peace in Bosnia by supporting joint service missions and conducting peacekeeping operations in the skies above the former Yugoslavia; and

WHEREAS, The 940th ARW flies KC-135E model aircraft equipped with TF-33 engines that are reaching the end of their 10-year to 15-year life span; and

WHEREAS, These engines are of 1960's technology and do not meet contemporary international or United States noise, emission, and fuel efficiency standards; and

WHEREAS, Conversion to the KC-135R model engine would provide each aircraft with 26 percent more thrust on takeoff and 18 percent improved fuel consumption, offering increased offload capacity of 20,000 pounds of fuel; and

WHEREAS, The KC-135R model engine exceeds in-flight noise standards and offers a 69 percent reduction in in-flight engine emissions; and

WHEREAS, These engines are widely used in the commercial sector, making repair and parts available worldwide; and

WHEREAS, The 940th ARW is the only air refueling wing positioned in the central west coast that is capable of conducting or hosting "bridge" refueling operations for global deployment of United States Armed Forces to the Pacific region; and

WHEREAS, Conversion to the KC-135R aircraft with the multiport refueling system would allow the 940th ARW to cost-effectively support United States Marine Corps and United States Navy aircraft that are based at El Centro, Lemoore, and Miramar, California, and at Fallon, Nevada, as well as other locations worldwide; and

WHEREAS, The 940th ARW has been moved from Mather AFB to McClellan AFB due to Base Realignment and Closure (BRAC); and

WHEREAS, Conversion to the KC-135R model engine would ensure that the 940th ARW remains a viable-force structure asset and would preserve, for the Department of Defense and the nation, the skills of its 950 members, including 185 full-time employees of the unit who live in the central valley, including Sacramento, El Dorado, Yolo, Yuba, Sutter, Placer, and San Joaquin Counties; and

WHEREAS, Conversion to the KC-135R model engine would protect the 940th ARW's $22,000,000 contribution to the local economy in the form of maintaining salaries and operating expenses; and

WHEREAS, The 940th ARW creates an estimated 300 secondary jobs; and

WHEREAS, The loss of the 940th ARW would have a significant negative impact on the region's economy; and

WHEREAS, Resource limitations may not allow the United States Air Force Reserve to fund the conversion of both of its remaining KC-135E units to the KC-135R aircraft, since the Air Force Reserve Command has earmarked funding for the conversion of four additional aircraft, but has not decided which of the two remaining KC-135E model units will be converted; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature memorializes the President and the

Congress of the United States to endorse, support, and fund the 940th ARW as the next KC-135 unit to convert to KC135-R model aircraft, because that conversion would ensure that the 940th ARW remains a relevant, capable, and necessary part of the United States Air Force mission in the 21st century and a viable and productive asset to the Department of Defense, the State of California, and the nation; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to each member of the Senate Armed Services Committee and the House Veterans Affairs Committee.

RESOLUTION CHAPTER 90

Assembly Concurrent Resolution No. 178—Relative to the City of Riverside.

[Filed with Secretary of State July 13, 1998.]

WHEREAS, Since its creation in 1949 by the National Civic League, more than 4,000 communities have applied and fewer than 500 communities have been designated an "All-America City"; and

WHEREAS, The initial purpose of the All-America City Award of recognizing local government reform and efforts to support public education has shifted in recent years to the expanded purpose of encouraging broader community initiatives that include economic development, health and social service projects, and efforts to improve race relations; and

WHEREAS, The All-America City Award honors communities that best exemplify grassroots problem solving; and

WHEREAS, The cities named in 1998 as an "All-America City" were chosen based upon their ability to demonstrate collaboration, grassroots involvement, and consensus-based decisionmaking among the public, private, and nonprofit sectors to achieve communitywide goals; and

WHEREAS, The City of Riverside, in the County of Riverside, was one of only 10 cities awarded the designation in 1998 as an "All-America City" from among 112 applicant communities that represented 34 states; and

WHEREAS, The Riverside community's efforts in the Passport to College program that points pupils in grade school towards higher education, the Youth Action Plan, and the University Eastside Community Collaborative, an after-school program to keep kids away from gangs, received special notice; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby recognizes and congratulates the City of Riverside for its achievement in being designated an All-America City in the 1998 All-America City Award and joins with the City of Riverside and all Californians in celebrating the receipt of this award; and be it further

Resolved, That the Chief Clerk of the Assembly shall transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 91

Senate Concurrent Resolution No. 65—Relative to the California Law Revision Commission.

[Filed with Secretary of State July 14, 1998.]

WHEREAS, The California Law Revision Commission is authorized to study only topics set forth in the calendar contained in its report to the Governor and the Legislature that are thereafter approved for study by concurrent resolution of the Legislature, and topics that have been referred to the commission for study by concurrent resolution of the Legislature; and

WHEREAS, The commission, in its annual report covering its activities for 1997 and 1998, recommends continued study of 21 topics, all of which the Legislature has previously authorized or directed the commission to study; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature approves for continued study by the California Law Revision Commission the topics listed below, all of which the Legislature has previously authorized or directed the commission to study:

(1) Whether the law should be revised that relates to creditors' remedies, including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code provisions on repossession of property), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, insolvency, and related matters;

(2) Whether the California Probate Code should be revised, including, but not limited to, the issue of whether California should adopt, in whole or in part, the Uniform Probate Code;

(3) Whether the law should be revised that relates to real and personal property, including, but not limited to, a marketable title act, covenants, servitudes, conditions, and restrictions on land use or

relating to land, possibilities of reverter, powers of termination, Section 1464 of the Civil Code, escheat of property and the disposition of unclaimed or abandoned property, eminent domain, quiet title actions, abandonment or vacation of public streets and highways, partition, rights and duties attendant upon assignment, subletting, termination, or abandonment of a lease, powers of appointment, and related matters;

(4) Whether the law should be revised that relates to family law, including, but not limited to, community property, the adjudication of child and family civil proceedings, child custody, adoption, guardianship, freedom from parental custody and control, and related matters, including other subjects covered by the Family Code;

(5) Whether the law relating to class actions should be revised;

(6) Whether the law relating to offers of compromise should be revised;

(7) Whether the law relating to discovery in civil cases should be revised;

(8) Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for the payment of attorneys' fees to the prevailing party;

(9) Whether the acts governing special assessments for public improvement should be simplified and unified;

(10) Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised;

(11) Whether the Evidence Code should be revised;

(12) Whether the law relating to arbitration should be revised;

(13) Whether there should be changes to administrative law;

(14) Whether the law relating to the payment and the shifting of attorney's fees between litigants should be revised;

(15) Whether the Uniform Unincorporated Nonprofit Association Act, or parts of that uniform act, and related provisions should be adopted in California;

(16) Whether the law governing unfair competition litigation under Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code should be revised to clarify the scope of the chapter and to resolve procedural problems in litigation under the chapter, including the res judicata and collateral estoppel effect on the public of a judgment between the parties to the litigation, and related matters;

(17) Whether the requirement of paragraph (2) of subdivision (b) of Section 800 of the Corporations Code that the plaintiff in a shareholder's derivative action must allege the plaintiff's efforts to secure board action or the reasons for not making the effort, the standard under Section 309 of the Corporations Code for protection of a director from liability for a good faith business judgment, and related provisions, should be revised;

(18) Recommendations to be reported pertaining to statutory changes that may be necessitated by court unification;

(19) Whether Section 351 of the Code of Civil Procedure, relating to tolling statutes of limitations while the defendant is out of state, and related matters, should be revised;

(20) Whether the California law of contracts should be revised, including the law relating to the effect of electronic communications on the law governing contract formation, the statute of frauds, the parol evidence rule, and related matters;

(21) Whether the laws within various codes relating to environmental quality and natural resources should be reorganized in order to simplify and consolidate relevant statutes, resolve inconsistencies between the statutes, and eliminate obsolete and unnecessarily duplicative statutes; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the California Law Revision Commission.

RESOLUTION CHAPTER 92

Senate Concurrent Resolution No. 68—Relative to World War II.

[Filed with Secretary of State July 14, 1998.]

WHEREAS, In World War II, which began in 1939 and ended in 1945, the Philippines were allied with the United States against Japan and other Axis Powers; and

WHEREAS, Japanese troops began invading the Philippines on December 10, 1941, just days after the bombing of Pearl Harbor in Hawaii; and

WHEREAS, United States and Filipino troops defending the country moved from Manila to the Bataan Peninsula, which extends into Manila Bay from the coast of the Island of Luzon; and

WHEREAS, United States and Filipino troops on the Bataan Peninsula, under the command of General Douglas MacArthur, held back Japanese attacks for more than three months despite being cut off from outside assistance, malnourished, and ill; and

WHEREAS, In March of 1942, General MacArthur was ordered to duty in Australia and left the Philippines; and

WHEREAS, The Filipino-American defense of Bataan was hampered by many factors, including a shortage of food, ammunition, medicine, and trucks and other vehicles; and

WHEREAS, On April 9, 1942, the United States and Filipino troops defending the Bataan Peninsula were forced to surrender, although some soldiers continued to resist the Japanese from nearby Corregidor Island until May 6 of that year; and

WHEREAS, The Japanese required the troops to walk approximately 80 miles to prison camps, even though American trucks were available to transport them; and

WHEREAS, That journey is known as the "Bataan Death March" because of the high number of prisoners who died; and

WHEREAS, The prisoners were then loaded onto rail cars bound for Camp O'Donnell, near Tarlac, or a camp at Cabanatuan, outside of Manila; and

WHEREAS, Approximately 1,600 Americans died in the first 40 days in Camp O'Donnell, and almost 20,000 Filipinos died in the first four months of captivity there; and

WHEREAS, Approximately 22,000, or 85 percent of all Americans taken prisoner during World War II, were taken in the Philippines; and

WHEREAS, Approximately 5,135 American prisoners of war died or were killed in captivity in the Philippines, a rate far higher than that suffered by the prisoners of war who were held by Germany ; and

WHEREAS, The Philippine Islands were not recaptured from the Japanese until 1945; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the valor of the men and women of the United States and the Philippines who served on the Bataan Peninsula and Corregidor Island during World War II be recognized and commended; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 93

Senate Concurrent Resolution No. 69—Relative to the Donald D. Doyle Highway.

[Filed with Secretary of State July 14, 1998.]

WHEREAS, The Honorable Donald D. Doyle served the constituents of Contra Costa County in the California State Assembly from 1953 to 1959, and gained a well-deserved reputation for honesty, decency, and selfless dedication to the causes of education, health, and transportation; and

WHEREAS, Donald Doyle is a native Californian who began his career in the San Francisco Bay area in the insurance business before successfully running for a seat on the California State Assembly; and

WHEREAS, As Chairman of the Assembly Education Committee for four years, Donald Doyle actively supported and championed education issues, particularly with regard to higher education; and

WHEREAS, Donald Doyle's lifelong commitment to improving education is manifested by his multitude of community roles, which include membership on and chairmanship of the Board of Independent Colleges of Northern California, presidency of the Board of Regents of Saint Mary's College of California, membership on the Board of Trustees of Saint Mary's College, membership on the Board of Directors of De La Salle Institute, and presidency of Junior Achievement; and

WHEREAS, Donald Doyle's leadership in mental health issues is evidenced by his authorship of the Short-Doyle Mental Health Act of 1958, for which he received a medal in the mental health field from the University of California at San Francisco; and

WHEREAS, Donald Doyle has had a tremendous impact on improving the transportation of the San Francisco Bay area by successfully authoring legislation which produced the ferry boat transportation system between the Cities of Martinez and Benecia; and

WHEREAS, Donald Doyle has led a distinguished career of 43 years in the insurance business and, as the Chairman and Chief Executive Officer of Bayview Savings and Loan, was heralded as the man who saved the institution from extinction by reorganization and deft management; and

WHEREAS, In recognition of his contributions to Contra Costa County and all of the citizens of California, it is appropriate to designate a highway in that county as the Donald D. Doyle Highway; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the portion of Interstate Highway Route 680 from the junction with Interstate Highway Route 580 to the junction with State Highway Route 24, is hereby officially designated the "Donald D. Doyle Highway"; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of erecting appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this official designation and, upon receiving contributions from private sources to cover that cost, to erect those plaques and markers; and be it further

Revolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 94

Senate Concurrent Resolution No. 71—Relative to postsecondary education.

[Filed with Secretary of State July 14, 1998.]

WHEREAS, California has sought to provide its citizens broad access to postsecondary education opportunities within its public colleges and universities; and

WHEREAS, California has structured its public college and university systems to restrict the numbers of students who can be admitted as freshmen to the California State University and the University of California while admitting all who can benefit from instruction beyond high school to the California Community Colleges; and

WHEREAS, The promise of access to a baccalaureate education relies heavily on a successful transfer function in the community colleges; and

WHEREAS, Community college students successfully completing lower division general education requirements and attaining eligibility to transfer to the California State University or the University of California must be provided an opportunity to continue their educational pursuits at a baccalaureate degree-granting institution; and

WHEREAS, No statute or policy of the California State University or the University of California guaranteeing admission to a transfer-eligible community college student currently exists; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That it is the intent of the Legislature that the Trustees of the California State University and the Regents of the University of California adopt a policy that ensures eligible community college transfer applicants of admission to a campus within the university system; and be it further

Resolved, That it is the intent of the Legislature that the California State University and the University of California report annually to the California Postsecondary Education Commission the number of eligible community college students who apply to their respective system, the number admitted, the number denied admission, and the number who actually enroll.

RESOLUTION CHAPTER 95

Senate Concurrent Resolution No. 72—Relative to the Delbert A. Brown Memorial Bridge.

[Filed with Secretary of State July 14, 1998.]

WHEREAS, Delbert A. Brown was born on December 1, 1931, and served in the United States Army during the Korean War; and

WHEREAS, Mr. Brown devoted tremendous energy during his lifetime to improving the state's transportation system, and served as

a founding member of the Redwood Chapter of the American Society of Civil Engineers, Chairman of the United Way California Division of Highways Drive, Chairman of the District Safety and Aesthetics Committee, President of the California State Engineers Association, and Deputy District Director of the Department of Transportation; and

WHEREAS, Mr. Brown taught engineering courses at the College of the Redwoods, and served as a speaker at high schools and community organizations over the years; and

WHEREAS, Mr. Brown was the recipient of the United Way Gold Torch Award, in 1970; the CalTrans Certificate of Appreciation for 25 years of service, in 1981; the Professional Engineers in California Government Award for 31 years of service, in 1987; a letter of appreciation from Save the Redwoods Foundation for work on Redwood National Park Bypass, in 1985; and the CalTrans Certificate of Appreciation for Contract Administration, in 1988; and

WHEREAS, Mr. Brown was elected to serve on the Loleta School Board in 1995; and

WHEREAS, Mr. Brown was instrumental in promoting, planning, and supervising the construction of Redwood National Park Bypass; and

WHEREAS, Mr. Brown lived an exemplary life and provided outstanding service to the State of California and the United States; and

WHEREAS, Renaming the Boyes Creek Viaduct located on the Redwood National Park Bypass would provide a unique opportunity to honor one of the state's outstanding citizens; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That Boyes Creek Viaduct on the Redwood National Park Bypass be redesignated the Delbert A. Brown Memorial Bridge ; and be it further

RESOLVED, That it is the intent of the Legislature that any signs designating the Delbert A. Brown Memorial Bridge also include appropriate references to Boyes Creek; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

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RESOLUTION CHAPTER 96

Senate Concurrent Resolution No. 74—Relative to the Orange County Veterans Memorial Highway.

[Filed with Secretary of State July 14, 1998.]

WHEREAS, Some 40,000,000 Americans have served in the United States Armed Forces during wartime, with more than a million of them giving up their lives in defense of the principles of freedom; and

WHEREAS, It is a solemn tradition in our nation to honor Americans who secured for us the peace and freedom we enjoy every day; and

WHEREAS, It is appropriate for the California Legislature to recognize the sacrifices of veterans who have given their lives for their country; and

WHEREAS, California has the largest number of veterans of the 50 states, a population exceeding 3,000,000, approximately 252,000 of whom reside in Orange County; and

WHEREAS, Designating a memorial highway in Orange County would serve as a permanent tribute to every Orange County veteran; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby designates, as the Orange County Veterans Memorial Highway, the portion of State Highway Route 133 that follows Laguna Canyon Road from the Pacific Coast Highway to its intersection with the Eastern Transportation Corridor now under construction near the El Toro Marine Corps Air Station; and be it further

Resolved, That the Department of Transportation is requested to move the existing Veterans Memorial Highway sign in Orange County to an appropriate location on Route 133; and be it further

Resolved, That the Department of Transportation is also requested to determine the cost of erecting a sign similar to the existing sign, consistent with the signing requirements for the state highway system, showing the special designation and, upon receiving donations from nonstate sources covering that cost, to erect that sign; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation and a suitably prepared copy to the Orange County Veterans Advisory Council.

RESOLUTION CHAPTER 97

Senate Concurrent Resolution No. 80—Relative to the CHP Officer Alfred R. Turner Memorial Highway.

[Filed with Secretary of State July 14, 1998.]

WHEREAS, Alfred R. Turner was born in a little log and rock house in rural Chester, Arkansas, on February 9, 1940, the fifth child of Mr. and Mrs. Charles W. Turner; and

WHEREAS, Alfred R. Turner moved to Susanville, California, on May 14, 1944, and remained in northern California until joining the United States Navy at 17 years of age; and

WHEREAS, Seven years after joining the Department of the California Highway Patrol, on December 16, 1975, California Highway Patrol Officer Alfred R. Turner was shot and killed by a motorist on Interstate Highway Route 5 near Los Banos, after stopping the vehicle because of a burned-out headlight; and

WHEREAS, Officer Turner was unaware that the car he stopped had just been stolen in San Leandro, and when the officer stepped out of his patrol car, the motorist exited his vehicle, and, as the two men began walking toward each other, the motorist suddenly pulled a .357 magnum revolver and opened fire; and

WHEREAS, Officer Turner was hit with three bullets, but returned fire and hit his assailant with five shots; and

WHEREAS, Officer Turner, although critically wounded, managed to return to his patrol car and radio for help; and

WHEREAS, Officer Turner, age 35, succumbed to his wounds and died 12 days later; and

WHEREAS, This tragic incident continues to live in the memory of the law enforcement community and local residents of the entire west side of Merced County; and

WHEREAS, As a result of his dedication to his duties, Officer Turner made the ultimate sacrifice in protection of the citizens of our state; and

WHEREAS, The memory of California Highway Patrol Officer Alfred R. Turner continues to be exemplary for current peace officers throughout the state; and

WHEREAS, All California Highway Patrol officers and other peace officers continue to perform their duties without regard for personal safety; and

WHEREAS, It is appropriate that a portion of Interstate Highway Route 5 be dedicated to the memory of California Highway Patrol Officer Alfred R. Turner who made the ultimate sacrifice in service to the people of California; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby designates the 11.3-mile stretch of Interstate Highway Route 5 between State Highway Route 152 and State Highway Route 165 the CHP Officer Alfred R. Turner Memorial Highway; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of erecting appropriate plaques and markers, consistent with the signing requirements for the state highway

system, showing the special designation, and upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Department of Transportation and to the author for appropriate distribution.

RESOLUTION CHAPTER 98

Senate Concurrent Resolution No. 96—Relative to the 25th anniversary of the Department of Transportation.

[Filed with Secretary of State July 14, 1998.]

WHEREAS, The Department of Transportation is marking its silver anniversary as a state department on July 1, 1998; and

WHEREAS, Assembly Bill 69 of the 1972 Regular Session of the Legislature (Ch. 1253, Stats. 1972), authored by former Assembly Member Waddie Deddeh of San Diego, transformed the former Division of Highways into a multimodal Department of Transportation (Caltrans) in the then Business and Transportation Agency; and

WHEREAS, Assembly Bill 69 recognized that the changing needs of California would be better served by a transportation system employing various modes of travel including highways, rail, and aeronautics; and

WHEREAS, For the past 25 years, thousands of Caltrans employees have diligently worked in building, maintaining, and operating the finest transportation system in the world; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature takes great pride in recognizing the 25th anniversary of the creation of the Department of Transportation and extends the thanks and best wishes of all the people of California for a job well done to all the Caltrans employees, both past and present, who have served the transportation needs of our state so diligently for the past quarter of a century; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of the Department of Transportation.

RESOLUTION CHAPTER 99

Senate Joint Resolution No. 36—Relative to air pollution.

[Filed with Secretary of State July 14, 1998.]

WHEREAS, The federal Clean Air Act Amendments of 1990 (P.L. 101-549) require areas that exceed the federal ambient air quality standard for carbon monoxide to use oxygenated gasoline during the winter in some areas, and year-round in areas with the most severe ozone pollution; and

WHEREAS, Methyl tertiary-butyl ether (MTBE) is the most commonly used oxygenate in the United States; and

WHEREAS, MTBE has leaked into California's groundwater and contaminated valuable water supplies; and

WHEREAS, MTBE is colorless, but tastes and smells like turpentine; and

WHEREAS, MTBE can be tasted and detected by smell, at extremely low concentrations; and

WHEREAS, MTBE is highly water soluble and moves at almost the same rate as water, thus making containment and cleanup after contamination very difficult; and

WHEREAS, The United States Environmental Protection Agency (USEPA) has tentatively classified MTBE as a possible human carcinogen; and

WHEREAS, MTBE is alleged to cause serious health risks and is the subject of an extensive legislatively mandated study to determine if MTBE exposure causes memory loss, asthma, skin irritation, or other problems; and

WHEREAS, MTBE has been found in groundwater in 16 other states besides California; and

WHEREAS, The USEPA has recommended a range of 20 to 40 parts per billion (ppb) in its Drinking Water Health and Consumer Acceptability Advisory, but that advisory is not enforceable; and

WHEREAS, A high level of MTBE contamination forced the City of Santa Monica to shut down contaminated wells that supplied the city with drinking water, and the city eventually lost 71 percent of its local water supply; and

WHEREAS, MTBE has been measured in 27 different lakes and reservoirs in California, including Lake Shasta and Lake Tahoe; and

WHEREAS, Incidents of MTBE leakage from sites with new storage tanks meeting federal requirements have been alleged, and state and federal agencies are examining the precise cause of this MTBE leakage; and

WHEREAS, Due to public outcry, the State of Alaska demanded and received a waiver from USEPA precluding the use of MTBE; and

WHEREAS, Major oil companies are convinced that it is a combination of properties of gasoline that produces cleaner burning gasoline and that no individual component is capable of reducing smog in California; and

WHEREAS, California has historically led the nation in enacting air quality improvement measures that provide substantial health, economic, and social benefits for the state's citizens; and

WHEREAS, Both the California Cleaner Burning Gasoline Program and federal reformulated gasoline programs are implemented concurrently in Los Angeles, Orange, Riverside, San Bernardino, San Diego, Ventura, and Sacramento Counties, and in portions of surrounding counties, resulting in duplicative bureaucracy, inconsistent requirements, and unnecessary costs; and

WHEREAS, The California Cleaner Burning Gasoline Program provides greater flexibility than the federal program to produce gasoline that meets the stringent emission reduction mandates; and

WHEREAS, Both Congressman Brian Bilbray and Senator Dianne Feinstein have introduced legislation, H.R. 630 and S. 1576, respectively, to remove the duplication and overlap of two regulatory regimes by allowing California to apply its own regulations for reformulated gasoline in lieu of the federal regulations within the state, as long as it achieves equivalent or greater emission reductions; and

WHEREAS, H.R. 630 has broad bipartisan support from the members of the California congressional delegation; and

WHEREAS, The State Air Resources Board expressed its support for H.R. 630 in writing to the Honorable Thomas J. Bliley, Jr., Chairman of the House Committee on Commerce on February 28, 1997; and

WHEREAS, The California State Legislature has historically supported efforts to eliminate overlapping and duplicative regulations that provide no additional benefits; and

WHEREAS, California has received a waiver pursuant to Section 209(b)(1) of the federal Clean Air Act (42 U.S.C. Sec. 7543(b)(1)) allowing California to be exempt from some sections of the federal Clean Air Act as long as the state's ambient air quality standard for carbon monoxide is the same or more stringent than federal requirements; and

WHEREAS, The Section 209(b)(1) waiver does not apply to the federal gasoline oxygenate requirement; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Congress of the United States to enact legislation to permit California to promulgate and implement reformulated gasoline rules in lieu of the federal regulations, if those regulations achieve equivalent or greater emission reductions than required under the federal Clean Air Act; and be it further

Resolved, That the Legislature of the State of California supports H.R. 630 as introduced on February 6, 1997, and S. 1576 as introduced on January 28, 1998, respectfully memorializes Congress to enact H.R. 630 or S. 1576, and respectfully requests the President of the United States to sign H.R. 630 or S. 1576; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Secretary of the United States Environmental Protection

Agency, the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 100

Assembly Concurrent Resolution No. 84—Relative to the Randy Jennings Memorial Bridge.

[Filed with Secretary of State July 15, 1998.]

WHEREAS, Construction of a new bridge, crossing the Feather River on State Highway Route 162, immediately west of the intersection of Route 162 and State Highway Route 70 in Butte County, is nearing completion; and

WHEREAS, The occasion of the completion of this bridge affords a unique opportunity for honoring Butte County Deputy Sheriff Randy Jennings, who made the ultimate sacrifice to the citizens of Butte County; and

WHEREAS, On May 21, 1997, while investigating a domestic dispute complaint, deputy Randy Jennings was killed; and

WHEREAS, Randy Jennings was raised in the Oroville community and was very well liked and respected by all of the citizens of Butte County; and

WHEREAS, He will be sorely missed by all of his friends and family, particularly his widow, Terry Jennings; and

WHEREAS, It is appropriate that upon the completion of the new bridge, crossing the Feather River on State Highway Route 162 in Butte County, that the bridge be dedicated to the memory of Randy Jennings; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the bridge crossing the Feather River on State Highway Route 162, immediately west of the intersection of Route 162 and State Highway Route 70 in Butte County, is hereby officially designated the Randy Jennings Memorial Bridge; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 101

Senate Concurrent Resolution No. 67—Relative to the Joint Legislative Committee on Prison Construction and Operations.

[Filed with Secretary of State July 22, 1998.]

WHEREAS, As a result of the passage of Proposition 184 and the recent enactment of other laws, the inmate population of the state prison system is projected to increase by unprecedented numbers. The Department of Corrections currently operates 33 state adult correctional facilities, 38 camps, and 56 community correctional facilities, housing more than 155,000 inmates. The Department of Corrections also retains jurisdiction over more than 100,000 parolees; and

WHEREAS, As evidenced by the defeat of Proposition 205, the "Youthful and Adult Offender Local Facilities Bond Act of 1996" on the November 5, 1996, ballot, the people of the State of California are unwilling to support financially the expansion of correctional facilities. Californians are demanding greater fiscal accountability for the operation of correctional facilities; and

WHEREAS, The inmate population is projected to increase to over 171,000 in the 1998–99 fiscal year; and

WHEREAS, Controlling the rapid growth of corrections construction and operations costs is one of the greatest challenges facing this state. The total proposed budget for the Department of Corrections for the 1998–99 fiscal year is approximately four billion one hundred million dollars ($4,100,000,000); and

WHEREAS, Senate Concurrent Resolution 16 of the 1997–98 Regular Session reauthorized the existence of the Joint Legislative Committee on Prison Construction and Operations until June 30, 1998; and

WHEREAS, In order to provide for joint legislative oversight of the state's fastest growing segment of government, and to ensure a sense of fiscal responsibility to the people of California, it is vital that the Legislature permanently reestablish the Joint Legislative Committee on Prison Construction and Operations; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Joint Legislative Committee on Prison Construction and Operations is hereby reestablished. The committee shall assume primary responsibility for providing legislative scrutiny over prison construction and operations; and be it further

Resolved, That the committee shall also review and make recommendations on inmate population management issues as they affect problems of overcrowding, recidivism, and the successful return to society by inmates; and be it further

Resolved, That the committee shall consist of four Members of the Senate appointed by the Senate Committee on Rules, and four

Members of the Assembly appointed by the Speaker of the Assembly. A Member of the Senate shall chair the committee. The chairperson shall appoint staff persons who shall be authorized to inspect prison facilities and departmental documents, except as otherwise provided by law; and be it further

Resolved, That the committee and its members shall have all of the rights, duties, and powers conferred upon investigating committees and their members by the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time, which rules are incorporated herein and made applicable to this committee and its members; and be it further

Resolved, That the Senate Committee on Rules may make money available from the Senate Operating Fund as it deems necessary for the expenses of the Joint Legislative Committee on Prison Construction and Operations and its members. Any expenditure of money shall be made in compliance with policies set forth by the Senate Committee on Rules and shall be subject to the approval of the Senate Committee on Rules; and be it further

Resolved, That the Joint Legislative Committee on Prison Construction and Operations shall, within 15 days of authorization and consistent with the normal annual appropriations process for funding legislative committees, present its initial budget to the Senate Committee on Rules for its review, comment, and approval; and be it further

Resolved, That the Joint Legislative Committee on Prison Construction and Operations shall submit a report at the end of each legislative session to the Legislature on its activities; and be it further

Resolved, That the Joint Legislative Committee on Prison Construction and Operations is authorized to act until November 30, 2000, at which time the committee's existence shall terminate; and be it further

Resolved, That the Secretary of the Senate transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 102

Senate Concurrent Resolution No. 70—Relative to the Sonoma County Veterans Memorial Highway.

[Filed with Secretary of State July 22, 1998.]

WHEREAS, State Highway Route 101 is a north-south highway that spans California from the Oregon-California border to the junction with Interstate Highway Route 5 in Los Angeles; and

WHEREAS, A portion of State Highway Route 101 passes through Sonoma County; and

WHEREAS, The citizens of Sonoma County have a continuing sense of gratitude to those veterans who have done so much to preserve the American way of life; and

WHEREAS, The Board of Supervisors of the County of Sonoma has asked the Legislature to support its efforts to name the unnamed section of State Highway Route 101 in Sonoma County the Sonoma County Veterans Memorial Highway; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby designates the unnamed section of State Highway Route 101 beginning in Sonoma County and ending at Healdsberg at the Bill Lucius Highway the Sonoma County Veterans Memorial Highway; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of erecting the appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the special designation, and upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Director of Transportation and the Board of Supervisors of the County of Sonoma.

RESOLUTION CHAPTER 103

Senate Concurrent Resolution No. 81—Relative to a sister state relationship with the State of San Salvador, El Salvador.

[Filed with Secretary of State July 22, 1998.]

WHEREAS, The States of San Salvador and California are the commercial, industrial, and financial, centers of their respective countries; and

WHEREAS, San Salvador and California are the most populous states in their respective countries, and share common cultural ties, similar early history during the Spanish colonization, and strong family ties among sectors of their populations, and the Cities of Los Angeles, San Francisco, and San Salvador have the largest concentration of Salvadorans in their respective states; and

WHEREAS, California's educational and academic communities, through casework and research studies carried out by prestigious research institutions, have begun to recognize the significant economic, cultural migratory, and political contributions of the Salvadoran American community in California; and

WHEREAS, Although San Salvador and California share a great deal in common, they are sufficiently different that both would benefit from increased trade, investment, tourism, cultural, educational, and scientific exchanges; and

WHEREAS, The Legislature of the State of California is committed to encouraging relationships and exchanges between California and other regions of the world in order to promote better economic ties, understanding, and cultural relations; and

WHEREAS, Establishing and developing a sister state relationship between San Salvador and California would help achieve these goals, and would stimulate and facilitate additional mutually beneficial exchanges between cities such as Los Angeles, in which more than 450,000 Salvadorans reside, representing the second largest concentration of Salvadorans after San Salvador, the capitol city of El Salvador, and Salvadoran cities; and

WHEREAS, The State of San Salvador is committed to pass legislation necessary to enter into a sister state relationship with California; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California, on behalf of the people of the State of California, hereby extends an invitation to the people of the State of San Salvador, El Salvador, to join California as a sister state, and commit to the development of programs to foster social, economic, educational, scientific, and cultural programs in order to strengthen the democratization process and economic development of El Salvador and promote economic ties, and improve international understanding and goodwill between the two states and with El Salvador as a whole; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Mayor of San Salvador, the San Salvador Council of Municipalities, and the Governor of California.

RESOLUTION CHAPTER 104

Senate Concurrent Resolution No. 92—Relative to the proposed City of Chula Vista site as a future University of California campus.

[Filed with Secretary of State July 24, 1998.]

WHEREAS, The Department of Finance forecasts that postsecondary education enrollment within California will reach 2,276,886 by the year 2005; and

WHEREAS, The Department of Finance projects that the demand for higher education in the state will increase by over 437,000 students over the next 10 years; and

WHEREAS, The current system of public higher education has the capacity to enroll an additional 100,000 students, mostly through the community college system; and

WHEREAS, State law requires the University of California to admit the top 12.5 percent of graduating seniors; and

WHEREAS, The University of California will soon have the ability to accommodate only 7 percent to 9 percent of graduating seniors; and

WHEREAS, Currently the University of California at San Diego only accepts the top 4 percent to 5 percent of graduating seniors; and

WHEREAS, A shortage of enrollment capacity threatens to deny admission to students who are qualified for admission to the University of California; and

WHEREAS, The creation of a future University of California campus will greatly alleviate campus overcrowding and more readily satisfy the statutory mandate to provide top graduating seniors the opportunity to attend the University of California; and

WHEREAS, The University of California, Irvine, the University of California, San Diego, and the University of California, Davis have experienced sharp declines in the number of Black and Latino undergraduate admissions as freshmen for next fall; and

WHEREAS, Latino admissions declined by 20 percent at the University of California, Davis, 31 percent at the University of California, San Diego, and 8.6 percent at the University of California, Irvine; and

WHEREAS, The number of Black students admitted declined 36 percent at the University of California, Davis, 19 percent at the University of California, Irvine, and 45 percent at the University of California, San Diego; and

WHEREAS, The University of California's most selective campuses—the University of California, Los Angeles and the University of California, Berkeley—have predicted drops of 50 percent to 70 percent in Black and Latino undergraduate admissions; and

WHEREAS, University of California officials state that the declines are particularly disturbing because minority student applications increased substantially this year; and

WHEREAS, The creation of a future University of California campus will provide greater opportunities for underrepresented ethnic groups to attend the University of California; and

WHEREAS, San Diego County is the second most populated county in the State of California with a current population of 2,724,400 residents; and

WHEREAS, San Diego County is one of the State of California's most ethnically diverse counties with a large Latino population; and

WHEREAS, San Diego County has been and is projected to continue to be one of the fastest growing counties in the State of

California, with a population estimated to reach 3,267,254 residents by the year 2005; and

WHEREAS, The creation of a future University of California campus within San Diego County will serve a populous, growing, economically strategic and ethnically diverse community which currently does not have adequate access to a University of California education; and

WHEREAS, The City of Chula Vista has proposed that the Regents of the University of California designate a site of approximately 1,100 acres within the city as a future University of California campus; and

WHEREAS, The City of Chula Vista is San Diego County's second largest city with a population approaching 160,000 residents; and

WHEREAS, The City of Chula Vista is located in south San Diego County, approximately three miles north of the international border, and contains a large underserved population; and

WHEREAS, The City of Chula Vista and the County of San Diego have jointly adopted identical general plans for the 23,000-acre Otay Ranch master planned community expressly including a location for a university campus; and

WHEREAS, The Chula Vista and county general plans were supported by a certified Environmental Impact Report that evaluated the impacts of a university campus within the master planned community; and

WHEREAS, The adequacy of the Environmental Impact Report was validated by the San Diego County Superior Court, the Fourth District Court of Appeals, and the California Supreme Court (Chapparal Greens v. City of Chula Vista, (50 Cal. App. 4th 1134, Rev./Rehearing denied, 1997 Cal. LEXIS 725); and

WHEREAS, Approximately 697 acres of the proposed university site are free of biological and topographic constraints and deemed developable pursuant to the certified EIR and the San Diego Multi-Species Conservation Plan (MSCP), as adopted by the County of San Diego, and ratified by the Department of Fish and Game and the United States Fish and Wildlife Agency; and

WHEREAS, The proposed university campus overlooks the planned Otay Valley Regional Park, which connects the San Diego Bay with the Otay Lakes and San Ysidro Mountains; and

WHEREAS, The Chula Vista and County General Plans and the MSCP program permit up to 400 acres of the Otay Valley Regional Park to be used for active recreational purposes, potentially including activities in support of a university; and

WHEREAS, The proposed university campus is surrounded on two sides by an 11,375-acre biological preserve which can serve as a living museum from which to study southern California's uniquely diverse and complex environmental systems; and

WHEREAS, While the proposed campus is next to a permanently preserved, publicly owned and managed, and massive open-space system, the site is also only 17 miles from downtown San Diego and

Lindbergh International Airport and only three miles north of the international border and Rodriguez International Airport; and

WHEREAS, The proposed university campus is located immediately adjacent to the 160-acre United States Olympic Training Center, the only all-weather Olympic training facility in the nation; and

WHEREAS, The proposed university campus overlooks the City of San Diego's Otay Lakes, a reservoir system that provides sports and recreational opportunities for southern Californians; and

WHEREAS, The proposed university campus is immediately adjacent to SR 125, a planned toll road, now undergoing final environmental review and scheduled to be operational in the year 2001, connecting the international border with the San Diego County freeway system; and

WHEREAS, The proposed university campus is part of the large-scale master planned Otay Ranch community, with comprehensive facility financing plans in place to ensure the timely provision of needed public infrastructure to the university campus, including roads, sewer, water, and drainage facilities; and

WHEREAS, The San Diego Metropolitan Transit Development Board has incorporated the extension of San Diego's existing light-rail transit system into its long-range plans to serve the university campus and surrounding neighborhoods; and

WHEREAS, The proposed university campus is owned by only three property owners, all of whom have expressed a willingness to donate the land for possible use as a University of California campus; and

WHEREAS, The timely designation of the proposed City of Chula Vista site as a possible future University of California campus by the Board of Regents would capture a transitory opportunity to secure a uniquely qualified location upon which to grow the University of California system and serve the citizens of the State of California for generations to come; and

WHEREAS, The proposed university campus is located three miles north of the international border and one mile north of the 6,000-acre Otay Mesa industrial area; and

WHEREAS, The Otay Mesa industrial area, in conjunction with the Maquiladora industries along the international border, is poised to provide the economic engine to propel the San Diego region and all of California well into the next millennium; and

WHEREAS, The emergence of a world economy reliant upon Latin American markets has crystallized the need to build cross-border knowledge, understanding and appreciation; and

WHEREAS, The designation of the proposed City of Chula Vista site as a possible future University of California campus will create a unique opportunity to build synergetic relationships with nearby industries to expand economic development; and

WHEREAS, The endorsement of the proposed City of Chula Vista site as a possible future University of California campus would enhance opportunities for California's students to attend the University of California, and would create an opportunity to further international education while preserving the designation and use of the land; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the designation of the proposed City of Chula Vista site as a possible future University of California campus will greatly relieve overcrowding in the University of California system, will enhance opportunities for top graduating students to attend the University of California, will provide greater opportunities for underrepresented students to receive a University of California education, will foster international education and economic development, and will promote opportunities for research into one of California's most fragile ecosystems; and be it further

Resolved, That the timely acceptance of an offer to donate the proposed Chula Vista site for possible use as a future University of California campus is necessary to preclude urbanization of the site by conflicting uses; and be it further

Resolved, That the Legislature endorses the proposed Chula Vista site for possible use as a future University of California campus; and be it further

Resolved, That it is the intent of the Legislature:

(a) That, upon receipt of the Chula Vista site, the University of California has 30 years during which to decide whether to locate a campus of the University of California on that site.

(b) That the California Postsecondary Education Commission participate in this decisionmaking process in accordance with Chapter 11 (commencing with Section 66900) of Part 40 of the Education Code.

(c) That if, at the close of the 30-year period described in subdivision (a), no determination to locate a campus of the University of California on the Chula Vista site has been made, the University of California transfer title to the site back to the previous land owners; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Regents of the University of California.

RESOLUTION CHAPTER 105

Assembly Concurrent Resolution No. 146—Relative to the 25th Anniversary of the Latino Legislative Caucus.

[Filed with Secretary of State July 27, 1998.]

WHEREAS, The year 1998 marks the 25th anniversary of the Latino Legislative Caucus; and

WHEREAS, In 1962, Phil Soto and John Moreno were the first two Latinos elected to the Legislature during this century; and

WHEREAS, In 1968, Alex Garcia was elected to the Assembly and in 1970 Peter Chacon was also elected to the Assembly; and

WHEREAS, In 1972, three more Latinos were elected to the Assembly and in 1973, Alex Garcia, Peter Chacon, Joseph Montoya, Ray Gonzales, and Richard Alatorre, the five Latinos serving in the Legislature, formed the Chicano Legislative Caucus, and

WHEREAS, The establishment of that caucus marked a significant turning point in the political empowerment of the Latino community because, for the first time in California's legislative history, an agenda was formulated and legislative priorities were developed to protect and preserve the rights of Latinos throughout California; and

WHEREAS, Today, the Latino Caucus is composed of 17 members, including 4 Senators, Ruben Ayala, Charles Calderon, Richard Polanco, and Hilda Solis, and 13 Assembly Members, Joe Baca, Cruz Bustamante, Tony Cardenas, Gil Cedillo, Denise Moreno Ducheny, Martha Escutia, Liz Figueroa, Martin Gallegos, Sally Morales Havice, Diane Martinez, Grace Napolitano, Deborah Ortiz, and Antonio Villaraigosa; and

WHEREAS, The Caucus is one of the most influential organizations within the Legislature and members of the Caucus serve in strategic leadership positions that seek to improve the quality of life for working families in California as the issues affecting Latinos in California are issues that affect all Californians; and

WHEREAS, In the 1970s, when the Caucus was chaired by Assembly Member Alatorre, it addressed many policy issues affecting Latinos and all Californians; and

WHEREAS, During this time, the Caucus held weekly meetings, when the Legislature was in session, to discuss important policy issues, including issues affecting farmworkers which resulted in the enactment of the Agricultural Labor Relations Act that increased protections for California's farmworkers, the passage of the Bilingual Education Act in 1973 that provided for equal education for English learners in California's schools, and the enactment of legislation that increased the availability and accessibility of affordable housing for working families; and

WHEREAS, The Caucus also focused on legislation implementing outreach programs that diversified enrollment at public colleges and universities in California and employment within the state government workforce; and

WHEREAS, Assembly Member Alatorre's leadership in formulating the 1980 reapportionment plan laid the groundwork to ensure that seats in the Legislature were drawn to increase Latino representation, and the election of Gloria Molina to the Assembly in 1982 marked the election of the first Latina to the Legislature, and

WHEREAS, During Assembly Member Chacon's service as Chair of the Caucus from 1978 to 1991, the Caucus held regional meetings in various locations across California to discuss issues concerning Latino communities, printed a newsletter, and worked very closely during these years with the Legislative Black Caucus to address issues of concern to all working class families in California, and

WHEREAS, In 1991, the Chicano Legislative Caucus was renamed the Latino Legislative Caucus and Assembly Member Richard Polanco was elected the new Chair of the Caucus; and

WHEREAS, In the 1992 elections, the Assembly gained three additional Latino seats, expanding the Caucus membership to 10, and

WHEREAS, Four more Latinos were elected to the Legislature in 1994, bringing membership in the Caucus to 14, and Hilda Solis was elected as the first Latina in the Senate; and

WHEREAS, The 1996 elections brought four more new Latinos to the Legislature and Latinos began serving in significant and historical leadership positions in both the Assembly and the Senate; and

WHEREAS, In the Senate, Charles Calderon became the first Latino Senate Majority Floor Leader and in the Assembly, Cruz Bustamante became the first Latino Speaker, Antonio Villaraigosa became the first Latino Majority Leader, Denise Moreno Ducheny became the first Latino to Chair the Assembly Budget Committee and the Budget Conference Committee, Martha Escutia became the first Latino legislator to Chair the Assembly Judiciary Committee, and Joe Baca, the first Latino to serve as Speaker pro Tempore in 1995, was selected to serve as Assistant Speaker pro Tempore; and

WHEREAS, In the 1997 portion of the 1997–98 Regular Session, Speaker Cruz Bustamante negotiated the adoption of the first ever state-only food stamp program for individuals losing federal eligibility based on immigration status and during the same time, Majority Leader Antonio Villaraigosa, who was subsequently elected as the second Latino Speaker in 1998, worked on legislation restoring eligibility for Medi-Cal, pre-natal care, in-home supportive services, and Supplemental Security Income for the permanent resident community; and

WHEREAS, In 1997, Caucus members were responsible for enactment of legislation for the first-ever healthcare program, Healthy Families, for the children of California's working poor, and for enactment of legislation ensuring an eight-hour workday for all Californians; and

WHEREAS, The strong support of the Latino Legislative Caucus ensured the adoption of funding for farmworker housing for the first time in five years, secured funding for childcare for agricultural workers, resulted in establishment of a food voucher program for farmworkers, and gained allocation of funding for pesticide use enforcement; and

WHEREAS, In 1998, Members of the Latino Caucus in both houses assumed leadership positions, with Assembly Member Antonio Villaraigosa being elected Speaker of the Assembly and Senator Polanco, the Chair of the Latino Caucus, being elected Majority Leader of the Senate, thus being the second Latinos in history to hold these influential and powerful positions; and

WHEREAS, The issues confronting the Latino Legislative Caucus today continue to be similar to those it has struggled with for the past 25 years, including provision of affordable housing, ensuring that education is affordable and accessible, creating good paying jobs for all working California families, and improving the overall quality of life for all Latinos and all other Californians; now therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature recognizes the Latino Legislative Caucus for its outstanding public service upon its 25th Anniversary and commends the Latino Legislative Caucus for its many accomplishments since its formation in 1973.

RESOLUTION CHAPTER 106

Assembly Concurrent Resolution No. 159—Relative to lead poisoning.

[Filed with Secretary of State July 27, 1998.]

WHEREAS, The safety of our children is of utmost importance to secure their healthy future; and

WHEREAS, Lead poisoning can cause learning disabilities, behavioral problems, and at very high levels, seizures, comas, and even death; and

WHEREAS, More than 890,000 United States children aged one through five have elevated blood lead levels, and more than one-fifth of African-American children living in housing built before 1946 have elevated blood lead levels; and

WHEREAS, Over 80 percent of all homes built before 1978 in the United States have lead-based paint in them; and

WHEREAS, Deteriorated paint in older housing and dust and soil that are contaminated with lead from old paint and from past emissions of leaded gasoline are the largest contributing factors to lead poisoning; and

WHEREAS, Children between 12 and 36 months of age have a lot of hand to mouth activity, significantly increasing their risk for lead paint poisoning; and

WHEREAS, Education about potential lead poisoning sources, paint testing, and a simple blood test can prevent a lifetime spoiled

by the irreversible damage caused by lead poisoning; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That July 19 through July 25, 1998, inclusive, be recognized as Lead Poisoning Prevention Week; and be it further

Resolved, That all Californians are encouraged to participate in appropriate activities to increase lead poisoning awareness and prevention.

RESOLUTION CHAPTER 107

Assembly Concurrent Resolution No. 105—Relative to the Tom Taylor Bridge.

[Filed with Secretary of State July 30, 1998.]

WHEREAS, The recent completion of the new bridge crossing the Middle Fork of the Mokelumne River near West Point on State Highway Route 26 provides an opportunity for honoring former Calaveras County Supervisor, Tom Taylor; and

WHEREAS, Tom Taylor was born and raised in Calaveras County and has spent most of his very active life in the West Point-Rail Road Flat area of the county; and

WHEREAS, Tom Taylor was a four-term member of the Calaveras County Board of Supervisors, serving from 1980 through 1996; and

WHEREAS, Tom Taylor has been a tireless representative of Calaveras County, specifically Supervisorial District 2; and

WHEREAS, Public safety and the well-being of Calaveras County residents have always been of utmost concern to Supervisor Taylor; and

WHEREAS, Tom Taylor constantly pursued road improvements as a high priority for the county and his district; and

WHEREAS, Supervisor Taylor was instrumental in the pursuit of funding for the new bridge; and

WHEREAS, The recent completion of this new bridge provides the citizens of this state and particularly the citizens of Calaveras County with the opportunity to dedicate that bridge to Tom Taylor; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate, thereof concurring, That the bridge crossing the Middle Fork of the Mokelumne River near West Point on State Highway Route 26 in Calaveras County is hereby officially designated the Tom Taylor Bridge; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing

the special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 108

Assembly Concurrent Resolution No. 179—Relative to Domestic Violence Prevention Week.

[Filed with Secretary of State July 30, 1998.]

WHEREAS, In a national survey of over 6,000 American families, 50 percent of the men who frequently assaulted their wives also frequently abused their children; and

WHEREAS, Child abuse is 15 times more likely to occur in families where domestic violence is present; and

WHEREAS, Men who have witnessed their parents' domestic violence are three times more likely to abuse their own wives than children of nonviolent parents, with the sons of the most violent parents being 1,000 times more likely to become wife beaters; and

WHEREAS, Children who witness violence at home display emotional and behavioral disturbances as diverse as withdrawal, low self-esteem, nightmares, self-blame, and aggression against peers, family members, and property; and

WHEREAS, A comparison of delinquent and nondelinquent youth found that a history of family violence or abuse is the most significant difference between the two groups; and

WHEREAS, Over 3,000,000 children are at risk of exposure to parental violence each year; and

WHEREAS, Homicide is by far the most frequent manner in which women workers are fatally injured at work. A recent United States Department of Labor study showed that in 17 percent of these homicides, the alleged assailants were current or former husbands or boyfriends; and

WHEREAS, In a 1994 survey of senior executives of Fortune 1,000 companies, 66 percent of the respondents believed that a company's financial performance would benefit from addressing the issue of domestic violence among its employees; and

WHEREAS, In the same survey, significant numbers of respondents said domestic violence has a harmful effect on their company's productivity (49 percent), attendance (47 percent), and increases insurance and medical costs (44 percent). Eighty percent of respondents said that domestic violence affects employees from all walks of life; and

WHEREAS, In a New York study of 50 battered women, 75 percent said they had been harassed by the batterer while they were at work, 50 percent reported missing an average of three days per month, and 44 percent lost at least one job for reasons directly related to the abuse; and

WHEREAS, A Federal Bureau of Justice Statistics' survey found women were attacked about six times more often by offenders with whom they had an intimate relationship than were male violence victims during 1992 and 1993; and

WHEREAS, During each of those years women were the victims of more than 4.5 million violent crimes, including approximately 500,000 rapes or other sexual assaults. In 29 percent of the violent crimes against women by lone offenders the perpetrators were intimates--husbands, former husbands, boyfriends, or former boyfriends; and

WHEREAS, In the same survey, the victims' friends or acquaintances committed more than half of the rapes and sexual assaults, intimates committed 26 percent, and strangers were responsible for about one in five; and

WHEREAS, Forty-five percent of all violent attacks against female victims 12 years of age and older by multiple offenders also involved offenders they knew; and

WHEREAS, During 1992, approximately 28 percent of female homicide victims (1,414 women) were known to have been killed by their husbands, former husbands, or boyfriends; and

WHEREAS, Women of all races were about equally vulnerable to attacks by intimates. However, women in families with incomes below $10,000 per year were more likely than other women to be violently attacked by an intimate; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of July 12 through July 19, 1998, be declared Domestic Violence Prevention Week; and be it further

Resolved, That the Chief Clerk of the Assembly shall transmit a copy of this resolution to the President of the United States, the Governor of the State of California, the Director of the United States Department of Health and Human Services, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 109

Senate Concurrent Resolution No. 64—Relative to the International Year of the Ocean.

[Filed with Secretary of State July 30, 1998.]

WHEREAS, The ocean affects our daily lives in important ways by providing food, minerals, and other natural resources, opportunities for recreation, and waterways that can be used for transportation purposes; and

WHEREAS, Though more than 70 percent of the surface of the Earth is covered by water, vast areas of the ocean remain unexplored and some of the greatest mysteries of the Earth still lie beneath our oceans; and

WHEREAS, The United Nations has declared 1998 as the International Year of the Ocean, and this designation provides an opportunity for governments, organizations, and individuals to raise public awareness of the role the ocean plays in our lives, helps to recognize the importance of the ocean and marine environment, and encourages efforts to ensure the sustainable development of ocean resources; and

WHEREAS, Governor Wilson signed Executive Order W-162-97, making it the policy of the State of California to encourage and facilitate planning for the ocean and the coast of California through a number of efforts; and

WHEREAS, The Governor's executive order directs numerous state agencies, including the Resources Agency and the California Environmental Protection Agency, to take specified actions in 1998 to access, conserve, restore, and manage California's ocean resources and the ocean ecosystem; and

WHEREAS, The California Ocean Resources Management Act of 1990 (Division 27 (commencing with Section 36000) of the Public Resources Code) establishes the California Ocean Resources Management Program, which is intended to help guide the comprehensive and coordinated management, conservation, and enhancement of California's ocean resources for the benefit of current and future generations; and

WHEREAS, A report entitled California's Ocean Resources: An Agenda for the Future, which was prepared pursuant to the California Ocean Resources Management Act of 1990 (Division 27 (commencing with Section 36000) of the Public Resources Code) finds that (1) California's ocean ecosystem health is dependent on a series of complex interrelationships between land and sea, which must be recognized in any management scheme; (2) substantial economic benefits can be derived from ocean dependent industries; (3) ocean research, education, and technology development activities are necessary components for management; and (4) existing governmental processes are in need of enhanced coordination; and

WHEREAS, The purpose of designating 1998 as the International Year of the Ocean is to focus the attention of the public, governments, and decisionmakers on the importance of the ocean and marine environment, and to highlight ways in which ocean and marine

resources can be sustained and protected through the effective management of those resources; and

WHEREAS, In 1993, the Intergovernmental Oceanographic Commission of the United Nations Education, Science, and Cultural Organization (UNESCO) passed a resolution calling for an International Year of the Ocean, and the United Nations General Assembly formally adopted a similar proposal through its Resolution No. A/RES/49/13, which was adopted in December 1994; and

WHEREAS, The National Oceanic and Atmospheric Administration (NOAA) is leading the federal effort to promote the International Year of the Ocean and, as part of the Ocean Principals Group (OPG), is working with other organizations in this country to ensure that the federal government contributes to activities that further the objectives of the International Year of the Ocean; and

WHEREAS, OPG agencies are coordinating and promoting the International Year of the Ocean by organizing activities that highlight important issues relating to maritime transportation, national security, ocean resources, marine environmental quality, recreation and tourism, and weather, climate, and natural hazards; and

WHEREAS, International Year of the Ocean activities demonstrate to a broad audience that the ocean and its resources are vital to supporting all life on Earth, and that the ocean is a key source of food, medicine, energy, and commerce; and

WHEREAS, The ocean is the next frontier for landscapes and life-forms that await discovery; and

WHEREAS, Industries that depend on a healthy coast and ocean contribute at least $17.3 billion to the state's economy, and provide an estimated 370,000 jobs; and

WHEREAS, Tourism in coastal areas contributes approximately $10 billion to the state's economy; and

WHEREAS, Eighty percent of the state's population lives within 30 miles of the coast; and

WHEREAS, The 25th anniversary of the enactment of the Clean Water Act (33 U.S.C. Sec. 1251 et seq.) was celebrated in October 1997; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature recognizes the importance of preserving, developing, and protecting valuable ocean and marine resources and joins with the United Nations and other government agencies and organizations in designating 1998 as the International Year of the Ocean; and be it further

Resolved, That it is the intent of the Legislature that the California Environmental Protection Agency and the Resources Agency take actions to promote activities that support the International Year of the Ocean; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Governor, the California Environmental Protection Agency, and the Resources Agency.

RESOLUTION CHAPTER 110

Senate Concurrent Resolution No. 90—Relative to safety of journalists in Mexico.

[Filed with Secretary of State July 30, 1998.]

WHEREAS, The recent assassination attempt on Tijuana journalist Jesús Blancornelas by members of the Arellano Félix drug cartel has focused attention on the peril of Mexican journalists who report on the activities of powerful organized drug rings; and

WHEREAS, A growing number of Mexican journalists are courageously willing to expose drug trafficking and government corruption, and by doing so, place themselves in danger of physical assault; and

WHEREAS, Since 1990, 60 reporters in Mexico have been targets of violent attacks, and 14 Mexican journalists have been murdered since 1984; and

WHEREAS, The Blancornelas case is a tragic example of how drug trafficking and its associated violence have inextricable links on both sides of the border; and

WHEREAS, These links include the multibillion dollar cross-border drug trade and the palpable threat the drug cartels pose to Mexico's vital interests, as well as the personal, social, and economic havoc wrought by narcotics in the United States; and

WHEREAS, Further examples of the binational nature of this issue include the fact that Mexican drug traffickers have been known to recruit United States gang members in cities all along the border to work as henchmen in Mexico, including one of Blancornelas' would-be assassins, David Barrón Corona, who grew up in the San Diego area, where he was a member of a local street gang; and

WHEREAS, Any hope of successfully combating drug trafficking and the violence that goes with it will require the best efforts of Mexico and the United States working together in an alliance of cross-border cooperation, applying a cross-border strategy; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature commends Jesús Blancornelas and other Mexican journalists for their courageous commitment to exposing the activities of powerful drug cartels, and that, in order to promote the safety of journalists on both sides of the border between California and Mexico, it is the desire of the

Legislature that California law enforcement work in collaboration with Mexican law enforcement to develop mechanisms for full cooperation when either government is conducting an investigation into an attack on the press; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to representatives of the government of Mexico, the President and Vice President of the United States, the United States Congress, and representatives of federal, state, and local law enforcement involved in preventing criminal activity along the California and Mexican border.

RESOLUTION CHAPTER 111

Assembly Concurrent Resolution No. 165—Relative to the American Legislative Exchange Council.

[Filed with Secretary of State August 3, 1998.]

WHEREAS, In 1973, a small group of Democratic and Republican state legislators met in Chicago and founded a bipartisan membership association to advocate the fundamental Jeffersonian principles of free markets, limited government, federalism, and individual liberty, and named this new association the American Legislative Exchange Council (ALEC); and

WHEREAS, Over the past quarter-century, ALEC has been at the forefront of the revitalization of the relationship between the states and the federal government in Washington, D.C.; and

WHEREAS, ALEC has served as a counterweight against tendencies to centralize government further at the federal level by continuously striving to return as much power and as many resources as possible to the levels of government closest to the people; and

WHEREAS, ALEC is now the largest bipartisan individual membership association of state legislators, with 3,000 state legislators, and 30 full-time staff members; and

WHEREAS, The 300 foundations, companies, and private sector members of ALEC form a vital public-private partnership that has stimulated a bounty of innovation and activity at the state level to the immense benefit of the citizens of this nation; and

WHEREAS, Through its nine national task forces on commerce and economic development; civil justice; criminal justice; education, energy, environment, natural resources and agriculture; health and human services; tax and fiscal policy; telecommunications and information technology; and trade transportation, ALEC has created vital public policy laboratories for the development of policy strategies and model legislation for dissemination to the states; and

WHEREAS, ALEC has provided and continues to provide a forum for innovation and communication among the members' states through its task forces, publications, and cooperative public-private efforts to reach common sense, results-oriented policies; and

WHEREAS, During its first 25 years, ALEC has performed an immeasurable service to the people of this nation by preserving for each of us the opportunity to be effective participants in the greatest representative democracy on the face of the earth; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby congratulates the American Legislative Exchange Council on the occasion of its 25th anniversary and expresses heartfelt gratitude to and commends the American Legislative Exchange Council for its exemplary record of public service to its constituent states and to the republic; and be it further

Resolved, That the Legislature extends to the American Legislative Exchange Council best wishes for a long and productive future; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the American Legislative Exchange Council.

RESOLUTION CHAPTER 112

Assembly Concurrent Resolution No. 177—Relative to Truck Driver Appreciation Week.

[Filed with Secretary of State August 3, 1998.]

WHEREAS, The trucking industry performs an invaluable service to the citizens of the State of California by delivering food and goods to every home, school, business, and community in the state; and

WHEREAS, Trucks transport nearly 100 percent of all goods and products needed by California's citizens; and

WHEREAS, More than 70 percent of California's communities receive all their freight by truck; and

WHEREAS, The trucking industry employs one of every 12 Californians and pays $30 billion in wages and salaries; and

WHEREAS, Over 334,500 California families depend on truck drivers' wages; and

WHEREAS, Forty-one percent of trucking employees are minorities, with the average annual driver's wages of $33,000; and

WHEREAS, The trucking industry is committed to safe travel for all motorists on California's roads and highways; and

WHEREAS, The accident rate involving trucks in California has decreased by 8 percent over the past decade, while truck travel has increased by more than 40 percent; and

WHEREAS, California's professional truck drivers are among the safest drivers in the world; and

WHEREAS, Hundreds of professional truck drivers also have performed extraordinary acts of courage and heroism by aiding and rescuing injured and stranded motorists; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the week of August 9 through 15, 1998, is designated as Truck Driver Appreciation Week in honor of those truck drivers who play such a vital role in our state's economy; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 113

Assembly Concurrent Resolution No. 81—Relative to teacher preparation by the California State University.

[Filed with Secretary of State August 5, 1998.]

WHEREAS, California faces a severe shortage of qualified kindergarten, elementary, and secondary school teachers, with 300,000 new teachers needed over the next decade; and

WHEREAS, Expansion of the class size reduction program has increased the demand for teachers; and

WHEREAS, The presence of qualified teachers in the classroom is critical to the success of the class size reduction program; and

WHEREAS, The Commission on Teacher Credentialing has issued 20,000 emergency permits for teachers when school districts cannot find appropriately credentialed teachers; and

WHEREAS, The use of emergency permits by school districts has risen dramatically as a result of the class size reduction program, with 25 percent of teachers hired in 1996–97 having an emergency permit or waiver; and

WHEREAS, California needs to increase the number of teachers with appropriate education and training to meet the growing demand for teachers; and

WHEREAS, The majority of California teachers attend California State University (hereafter "CSU") teacher preparation programs to obtain their credentials, with CSU recommending 57 percent of single and multiple credentials issued; and

WHEREAS, The proportion of teacher credential candidates prepared by independent colleges and universities in California

increased 14 percent between 1992–93 and 1994–95, with independent colleges and universities currently preparing 39 percent of multiple subject and 36 percent of single subject credential recipients; and

WHEREAS, The CSU has a waiting list for some of its campuses of qualified candidates desiring entrance to teacher preparation programs; and

WHEREAS, CSU teacher preparation training is the most affordable training available to Californians desiring teacher preparation training; and

WHEREAS, The shortage of qualified teachers in California classrooms necessitates that California public teaching institutions find new ways to meet the demand for teacher preparation training and to accommodate the needs and diversity of teaching candidates; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature memorializes the Trustees of the California State University to report to the Legislature by January 30, 1999, on all of the following:

(1) The number of qualified candidates that entered CSU teacher preparation programs, by CSU campus.

(2) The number of qualified candidates to CSU that were unable to be accommodated, by CSU campus.

(3) Efforts by CSU campuses to expand programs to accommodate more teacher preparation candidates.

(4) Efforts by CSU campuses to increase the utilization of existing facilities to increase the number of teaching candidates that can be accommodated.

(5) Efforts by CSU campuses to address the diverse needs of teaching candidates, including offering evening, weekend, and summer classes; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 114

Senate Joint Resolution No. 30—Relative to airline service.

[Filed with Secretary of State August 10, 1998.]

WHEREAS, While airlines are doing a good job at maintaining safety, airline service standards have begun to decline; and

WHEREAS, According to a joint study of the Wichita State University and the University of Nebraska at Omaha, the airline

industry posted a relatively good safety record despite several high-profile airplane accidents; and

WHEREAS, This joint study found that the level of customer service provided by domestic airlines, in areas such as on-time performance, baggage loss, frequency of overbooking and "bumping," fares, and aircraft age has declined on an overall basis; and

WHEREAS, In making safety issues the top priority, less critical services should not be compromised; and

WHEREAS, According to the United States Department of Transportation, the following statistics relating to airline service are applicable to the top nine domestic airlines:

(a) Overall airline passenger complaints increased (per 100,000 passengers) in 1996 to 3.8 percent, up from 3.2 percent in 1995.

(b) The number of flights arriving and departing late increased in 1996 by 25.5 percent, up from 21.3 percent in 1995.

(c) Out of every 1,000 passengers, 5.3 passengers reported lost, damaged, delayed, or stolen baggage on domestic flights in 1996. This represents an increase from 5.18 complaints per 1,000 passengers in 1995.

(d) Out of every 1,000 passengers, 1.2 passengers were involuntarily denied boarding onto their flights due to overbooking. This represents an 88-percent increase over 1995 statistics; and

WHEREAS, Air travelers are severely inconvenienced when airports do not provide enough seating in airport terminals. When terminal seating is fully occupied, passengers who do not wish to sit in crowded bars or cafes are forced to stand on their feet or sit on the floor while they wait for their flight; and

WHEREAS, At a time when airfares and airline profits are increasing, the quality of service should not be decreasing; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature respectfully requests the President and the Congress of the United States to require the Federal Aviation Administration to mandate minimum service standards for domestic airlines, including, but not limited to, standards regarding on-time performance, lost baggage, overbooking, overcrowded airplanes, and overcrowded terminals; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 115

Senate Concurrent Resolution No. 82—Relative to the Bill of Rights of the United States Constitution.

[Filed with Secretary of State August 10, 1998.]

WHEREAS, The first 10 amendments to the United States Constitution are referred to as the Bill of Rights, which limit and define the powers of government; and

WHEREAS, Several of the original states refused to ratify the Constitution without an express Bill of Rights; and

WHEREAS, The Bill of Rights recognizes, affirms, and protects fundamental human and civil rights for which persons of all races have struggled for thousands of years; and

WHEREAS, The Bill of Rights secures our freedom to speak, print, read, assemble, pray, petition the government, and keep and bear arms; protects us from unreasonable arrests, searches, excessive bail, double jeopardy, coerced confessions, and cruel and unusual punishment; and secures our rights to due process, jury trials, and counsel, and to present defense witnesses; and

WHEREAS, The Bill of Rights protects our sovereign state from excesses of the federal government; and

WHEREAS, The Bill of Rights is integral to the American way of life, and America's civic holidays, President's Day, Independence Day, Labor Day, Veterans Day, Memorial Day, and Thanksgiving, all remind us of the special contributions and sacrifices made by our forefathers and leaders to preserve, protect, and extend our freedoms; and

WHEREAS, The Bill of Rights energizes our military defense because American servicemen and women swear an oath to preserve and defend the United States Constitution, which includes the Bill of Rights; when American military personnel fight and die for our country, they do so to protect our rights and freedoms under the Bill of Rights; and

WHEREAS, A Bill of Rights Day would help prevent the Bill of Rights from being otherwise forgotten, and since many Americans do not know their Bill of Rights, this special day would encourage our schools to instruct children about this aspect of our American heritage; and

WHEREAS, A Bill of Rights Day would declare America's commitment to fundamental human rights to the whole world; and

WHEREAS, Just as celebrating religious holidays reminds Americans of their religious beliefs and traditions, a Bill of Rights Day annually would remind America of the manner in which its history and philosophy have secured the rights for which oppressed people everywhere still yearn; and

WHEREAS, A Bill of Rights Day would be a memorial day honoring the personal sacrifices and deaths of countless millions of people who have struggled for basic human and civil rights over thousands of years; and

WHEREAS, A Bill of Rights Day would remind elected and appointed officials and employees of the state and local executive, legislative, and judicial branches of government that their authority and powers are limited; and

WHEREAS, A Bill of Rights Day would remind all members of government that they serve the citizens, not rule them, and that the citizens always hold the right to restrain government; and

WHEREAS, The rights and freedoms guaranteed by the Bill of Rights deserve perennial celebrations and the sacrifices made to protect the Bill of Rights deserve eternal remembrance; and

WHEREAS, The Bill of Rights of the United States Constitution was ratified on December 15, 1791; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That December 15, 1998, and every December 15 thereafter, be declared Bill of Rights Day in California; and be it further

Resolved, That all governmental bodies in California are encouraged to observe the annual Bill of Rights Day in a manner that brings to mind the meaning and importance of each of the 10 provisions contained therein; and be it further

Resolved, That on Bill of Rights Day, the Bill of Rights should be read in all public schools and in all government meetings and courtrooms convening that day; and be it further

Resolved, That on the first legislative session day following Bill of Rights Day, the Bill of Rights shall be read aloud, in its entirety, in both houses of the Legislature.

RESOLUTION CHAPTER 116

Assembly Concurrent Resolution No. 175—Relative to Valley Fever Awareness Month.

[Filed with Secretary of State August 10, 1998.]

WHEREAS, Valley fever (coccidioidomycosis), a progressive, multisymptom, respiratory disorder, is a debilitating disease; and

WHEREAS, It is caused by the inhalation of tiny airborne fungi that live in soil, but are released into the air by soil disturbance or wind; and

WHEREAS, Valley fever attacks the respiratory system causing infection which can lead to symptoms that resemble a cold, flu, or pneumonia-like symptoms; and

WHEREAS, Left untreated or mistreated, infection can spread from the lungs into the bloodstream causing inflammation to the skin, permanent damage to lung and bone tissue, and swelling of the membrane surrounding the brain leading to meningitis, which can be devastating and even fatal; and

WHEREAS, Once serious symptoms of valley fever appear, including pneumonia and labored breathing, treatment must be prompt with antifungal drugs that are disagreeable and often toxic, especially for patients who have it injected beneath the base of their skull for meningitis, causing side effects such as nausea, fever, and kidney damage; and

WHEREAS, Within California alone, valley fever is found in portions of the Sacramento Valley, all of the San Joaquin Valley, desert regions, and portions of southern California; and

WHEREAS, Valley fever affects the young, the elderly, and those with lowered immune systems, which number in the tens of thousands; and

WHEREAS, Valley fever has been a disease studied for the past 100 years, but still remains impossible to control and difficult to treat; and

WHEREAS, There is no known cure to date for valley fever ; however, researchers are closer than they ever have been in finding a much needed vaccine to this devastating disease; and

WHEREAS, Recognizing the research effort to find a vaccine and the funding partnership, including funding from the State of California, which was approved by the Legislature and signed by Governor Wilson in 1997; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature does hereby proclaim August 1998, as Valley Fever Awareness Month.

RESOLUTION CHAPTER 117

Assembly Joint Resolution No. 56—Relative to private activity bonds.

[Filed with Secretary of State August 10, 1998.]

WHEREAS, In 1986, the Congress of the United States placed a limitation on the total amount of tax-exempt private activity bonds that each state may issue annually at a maximum of $50 per capita; and

WHEREAS, Private activity bonds are tax-exempt bonds issued by state and local governments to provide low interest loans for first-time homebuyer mortgages, affordable rental housing developments, student loans, industrial development, and pollution control improvements; and

WHEREAS, The private activity bond authority provides an effective means of leveraging the resources of state and local governments in partnership with the private sector to deliver a significant amount of economic and public purpose benefits for California; and

WHEREAS, The current cap on allocation is harming the ability of states and localities to make much needed investment in their residents and communities; and

WHEREAS, The demand for private activity bond authority greatly exceeds the supply in most states, and in recent years, the demand for bond authority in California has been up to 10 times the available allocation; and

WHEREAS, Since the imposition of the cap, there has been no adjustment in the allocation formula, and as a result, inflation has eroded the cap's buying power by over 44 percent; and

WHEREAS, Representatives Houghton and Kennelly have introduced H.R. 979, and Senators D'Amato and Breaux have introduced S. 1251, both of which propose to increase the private activity bond cap from $50 to $75 per capita; and

WHEREAS, This bipartisan legislation would bring profound economic benefits to California; and

WHEREAS, In 1996 alone, California's $1.57 billion of private activity bond authority provided a significant positive impact on the state's economy; and

WHEREAS, This public benefit has included $1.28 billion of allocation to housing to finance more than 10,000 home mortgages and 6,800 affordable rental housing units, which created 17,400 new jobs; $113.5 million of financing for pollution control; $83.4 million for economic development which created over 2,000 jobs; and $96 million in student loans for over 20,000 college students; and

WHEREAS, The need for this legislation is magnified by the recent passage of federal welfare reform because it has been estimated that California will need 500,000 to 600,000 new jobs to effectively implement the welfare-to-work provisions of welfare reform; and

WHEREAS, The added bond cap allocation would help finance thousands more home mortgages, affordable rental housing, industrial development projects, student loans, and environmental cleanup projects, which will help create thousands of new jobs throughout California; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature respectfully memorializes the President and the Congress of the United States to enact legislation in the nature of H.R. 979 or S. 1251 to increase the federal cap on private activity bond authority; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the President pro Tempore of the United States Senate, to the Speaker of the United States House of Representatives, and to

each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 118

Senate Concurrent Resolution No. 86—Relative to school safety.

[Filed with Secretary of State August 13, 1998.]

WHEREAS, The Department of Justice crime statistics show that since 1989 the homicide arrest rate for juveniles has significantly exceeded that for adults; and

WHEREAS, The Department of Justice statistics also show that between 1985 and 1995 the juvenile arrest rate for violent crimes has increased 54.9 percent; and

WHEREAS, The number of juveniles in California between 10 and 17 years of age increased 17 percent between 1985 and 1995, and the number of juveniles arrested for homicide increased 121 percent during that same period; and

WHEREAS, While the juveniles in California between 10 and 17 years of age make up 11.3 percent of the state's total population, they account for 18.5 percent of those arrested for homicide; and

WHEREAS, The California Constitution guarantees students and staff the right to be safe and secure on public primary, elementary, junior high, and senior high school campuses; and

WHEREAS, There is a need for violence prevention strategies that effectively deal with individual and cultural relations and that include the collaboration of parents, community members, and law enforcement; and

WHEREAS, School districts, in conjunction with the Senate Select Committee on School Safety, will continue to strengthen their efforts to reduce and prevent violence through unity, harmony, and collaboration; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature recognizes October 1998 as School Safety Month and the week of January 11 to 15, 1999, inclusive, as Yellow Ribbon Week; and be it further

Resolved, That the Legislature encourages all schools to participate in appropriate activities during School Safety Month and throughout the year to recognize the importance of conflict resolution, mutual respect, and violence eradication; and be it further

Resolved, That the Legislature encourages parents, pupils, teachers, other school personnel, and members of the community to wear yellow ribbons or participate in other appropriate activities during the week of January 11 to 15, 1999, inclusive, to demonstrate their commitment to safe schools and in recognition of pupils who

have lost their lives as a direct result of school violence; and be it further

Resolved, That the Legislature encourages all schools to promote ongoing activities that develop positive leadership and prosocial behavior among youth, and actively involve pupils in helping to solve problems related to conflict and violence.

RESOLUTION CHAPTER 119

Senate Concurrent Resolution No. 63—Relative to Domestic Violence Awareness Month.

[Filed with Secretary of State August 14, 1998.]

WHEREAS, Home should be a place of warmth, unconditional love, tranquility, and security; however, for many Americans, home is tainted with violence and fear; and

WHEREAS, Domestic violence is more than the occasional family dispute; and

WHEREAS, According to the United States Department of Health and Human Services, domestic violence is the single largest cause of injury to American women, affecting 6,000,000 women of all racial, cultural, and economic backgrounds; and

WHEREAS, According to data published by the California Department of Justice in 1996, 624 incidents of domestic violence were reported, on average, every day in California. A 1994 survey report by the United States Department of Justice states that in the United States a woman is battered every 15 seconds.

WHEREAS, According to the United States Department of Labor, 1,000,000 people are assaulted and injured every year as a result of workplace violence, 1,000 people are killed every year due to workplace violence, and 20 percent of battered women lose their jobs due to harassment at work by abusive husbands or boyfriends; and

WHEREAS, More than one-half of the number of women in need of shelter from an abusive environment may be turned away from a shelter due to lack of space; and

WHEREAS, Women are not the only targets of domestic violence; young children, elderly persons, and men are also victims in their own homes; and

WHEREAS, Emotional scars are often permanent; and

WHEREAS, A coalition of organizations has emerged to confront this crisis directly. Law enforcement agencies, domestic violence hotlines, battered women and children's shelters, health care providers, churches, and the volunteers that serve those entities are helping the effort to end domestic violence; and

WHEREAS, It is important to recognize the compassion and dedication of the individuals involved in that effort, applaud their commitment, and increase public understanding of this significant problem; and

WHEREAS, The first Day of Unity was celebrated in October 1981 and was sponsored by the National Coalition Against Domestic Violence for the purpose of uniting battered women's advocates across the nation in an effort to end domestic violence; and

WHEREAS, That one day has grown into a month of activities at all levels of government, aimed at creating awareness about the problem and presenting solutions; and

WHEREAS, The first Domestic Violence Awareness Month was proclaimed in October 1987; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby proclaims the month of October 1998, as Domestic Violence Awareness Month; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the President of the United States, the Governor of the State of California, the Director of the United States Department of Health and Human Services, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 120

Senate Concurrent Resolution No. 103—Relative to Clean Water Day.

[Filed with Secretary of State August 14, 1998.]

WHEREAS, Every year since 1993, the surfers of California have recognized, on the third Saturday in August, the importance of clean water to the sport of surfing; and

WHEREAS, This day has been known as "Clean Water Day--The (or Agua) Thanksgiving"; and

WHEREAS, The purpose of this special day is to raise and reinforce Californians' appreciation of water, not only for human consumption but especially for recreation; and

WHEREAS, Water recreationists, on a hot summer weekend in California, are likely to be either beside or in water; and

WHEREAS, This day has been celebrated in San Diego over the past two years when 1,000 surfers paddled around Ocean Beach Pier; and

WHEREAS, Similarly, in San Francisco, 100 surfers crossed the Golden Gate; and

WHEREAS, Other events were held in the Santa Cruz and Monterey areas; and

WHEREAS, It is fitting that the Legislature set aside one day to emphasize the importance of quality water in the State of California; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That August 15, 1998, is hereby designated as Clean Water Day; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 121

Senate Joint Resolution No. 38—Relative to Lyme disease.

[Filed with Secretary of State August 18, 1998.]

WHEREAS, The United States Centers for Disease Control and Prevention (CDC) reports that Lyme disease continues to be a rapidly emerging infectious disease, representing the most common tick-borne illness in the nation; and

WHEREAS, The CDC reports that Lyme disease is presently in 45 states and is spreading, particularly in the western and midwestern states, with 28 states, including the State of California, reporting an increase in the incidence of the disease during 1996; and

WHEREAS, Over 16,000 cases were reported nationwide to the CDC in 1996, representing a 41-percent increase over the number of cases reported in 1995 and a 26-percent increase over those reported in 1994; and

WHEREAS, Nearly 100,000 cases have been reported to the CDC since 1982, representing a 32-fold annual increase in the number of reported cases, a figure that does not take into account the number of unreported cases due to misdiagnosis; and

WHEREAS, The CDC estimates that $60,000,000 may be spent annually for early acute stages of the disease; and

WHEREAS, California does not currently track reported cases of Lyme disease; and

WHEREAS, The CDC, the Lyme Disease Resource Center, and the American Lyme Disease Foundation have noted that there is presently no human vaccine available to protect against the disease; and

WHEREAS, Two major vaccine manufacturers have submitted product licensing applications (PLAs) to the federal Food and Drug Administration (FDA), seeking premarket approval for a Lyme disease vaccine; and

WHEREAS, It is the policy of the State of California that when vaccines are available to prevent the spread of potentially debilitating or fatal diseases every effort should be made to take all steps necessary to protect the citizens of the state, by encouraging those citizens at risk to receive the necessary vaccines; and

WHEREAS, Any delay in FDA approval will only result in the continued needless exposure of Americans to what is now a vaccine-preventable disease; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That, given the clinical severity of the disease, the FDA and the CDC are encouraged to take all steps possible to make a Lyme disease vaccine available to those persons at high risk of catching the disease; and be it further

Resolved, That the State Department of Health Services is requested to begin tracking Lyme disease and other tick-borne diseases; and be it further

Resolved, That the State Department of Health Services, in conjunction with the CDC and community-based support groups, develop an education program to help doctors and other people, in those areas of the state where the disease is active, to better diagnose, treat, and prevent the contraction of Lyme disease; and be it further

Resolved, That the State Department of Health Services consider the creation of an advisory committee of experts from within the department, community-based experts, and support groups, for the purpose of recommending to the Governor and Legislature any changes necessary to existing law to help in combating Lyme disease; and be it further

Resolved, That the Department of Industrial Relations is requested to begin to review current California Occupational Safety and Health Administration (Cal-OSHA) standards to ensure that those persons who work in occupations and geographical areas where exposure to the disease is likely are offered the vaccine by their employer; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Food and Drug Administration, to the Governor, to the State Department of Health Services, and to the Department of Industrial Relations.

RESOLUTION CHAPTER 122

Assembly Concurrent Resolution No. 72—Relative to parental notification of Megan's Law by school districts.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, Parents and guardians should exercise extreme caution in allowing their children to travel between home and school without adult supervision; and

WHEREAS, Parents and guardians should familiarize themselves with individuals in the neighborhood who may pose a threat to schoolage children; and

WHEREAS, Parents and guardians should utilize the provisions of Megan's Law (Section 290.4 of the Penal Code), pursuant to which the Department of Justice is required to provide to a local law enforcement agency in each county a CD-ROM or other electronic medium containing information regarding specified registered sex offenders, and those local law enforcement agencies, in turn, are required to make the CD-ROM or other electronic medium available for public viewing; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature strongly encourages the governing board of each school district to include in its annual notification to parents, required under Article 4 (commencing with Section 48980) of Chapter 6 of Part 27 of the Education Code, an additional item of notification regarding the availability of a CD-ROM or other electronic medium containing information regarding registered sex offenders, as required by Megan's Law, and to strongly recommend to the parents and guardians of the pupils enrolled in the school district that they utilize the information in the CD-ROM or other electronic medium to protect themselves and their children from registered sex offenders in their neighborhoods; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the governing board of each school district in the state.

RESOLUTION CHAPTER 123

Assembly Concurrent Resolution No. 82—Relative to diabetes awareness.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, Nearly 2.2 million people in California and Nevada have diabetes, one third of whom do not know it; and

WHEREAS, Diabetes is a leading cause of kidney failure and amputations, and the most common cause of amputations not caused by injury; and

WHEREAS, Diabetes is a also leading cause of blindness, particularly in adults aged 25 to 74; and

WHEREAS, People with diabetes are twice as likely to suffer a heart attack or stroke; and

WHEREAS, One out of every seven dollars spent on health care is spent on diabetes; and

WHEREAS, In the United States, diabetes is responsible for over 92 billion dollars each year in health care costs and lost productivity; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates the month of November as American Diabetes Month throughout the State of California, and encourages and promotes the effective detection, treatment, and eventual cure of this serious medical condition; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a suitably prepared copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 124

Assembly Concurrent Resolution No. 100—Relative to highways.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, Vic Fazio was elected to the Congress of the United States for 10 consecutive terms beginning in 1978, after having served in the California State Assembly from 1975 to 1978; and

WHEREAS, Vic Fazio has earned a reputation as one of Capitol Hill's most effective legislators and is recognized as one of the most influential leaders in the United States House of Representatives; and

WHEREAS, A portion of old State Highway Route 113, known as "Blood Alley" in Yolo County, was a narrow, two-lane road, bordered by large trees and ditches, with an at-grade railroad crossing and numerous at-grade intersections with county roads, city streets, and private driveways; and

WHEREAS, Studies to upgrade that portion of the route had been underway since 1956, and Vic Fazio secured federal demonstration funds in 1985 to provide a continuous four-lane freeway for the portion of State Highway Route 113 between Interstate Highway Route 5 and Interstate Highway Route 80, which opened to traffic on October 5, 1990; and

WHEREAS, In recognition of his dedication to the needs of his constituents and the safety of motorists driving on State Highway Route 113, it is appropriate to designate the portion of State Highway Route 113 between Interstate Highway Route 5 and Interstate Highway Route 80 the Vic Fazio Highway; and

WHEREAS, The late Helen Madere, the former Vice-Mayor of the City of Rio Vista, will long be remembered for her efforts to improve the safety of driving on State Highway Route 12; and

WHEREAS, As President of the Highway 12 Association, Ms. Madere was a key force behind the safety improvements outlined in House Resolution 45 (by Assembly Member Hannigan) of the 1993–94 Regular Session of the Legislature, and Assembly Bill 827 (by Assembly Member Thomson, Ch. 709, Stats. 1997) which established a "Safety Enhancement-Double Fine Zone" between the City of Lodi and the City of Suisun City on State Highway Route 12; and

WHEREAS, As Rio Vista's representative to the Solano County Transportation Authority, Ms. Madere was known as an advocate for advancing regional transportation projects; and

WHEREAS, Ms. Madere, who had an accounting background and owned a tax preparation business, was instrumental in helping Rio Vista recover from a financial crisis during the 1980's; and

WHEREAS, Ms. Madere was an active participant in many civic and community activities in Rio Vista since moving there in 1959; and

WHEREAS, In recognition of her contributions to Rio Vista, it is appropriate to designate the Rio Vista Bridge on State Highway Route 12 the Helen Madere Memorial Bridge; and

WHEREAS, On May 23, 1976, California Highway Patrol Officer Gary L. Hughes, a dedicated traffic officer, was killed in the line of duty at the age of 37 years, while seated in a patrol vehicle on eastbound Interstate 80 between Redwood Street and State Highway Route 37 in Vallejo; and

WHEREAS, Officer Hughes, while conducting an enforcement stop with his partner, Officer Lance Thelen, was rear-ended by another driver; and

WHEREAS, Officer Hughes sustained massive head injuries and died enroute to the hospital; and

WHEREAS, The errant driver was initially charged with felony driving under the influence and was subsequently charged and convicted of misdemeanor vehicular manslaughter; and

WHEREAS, Officer Hughes, at the age of seven years, moved from Oregon with his family to Vallejo, California, where he graduated with honors from Vallejo High School; and

WHEREAS, Officer Hughes, prior to beginning his career with the Department of the California Highway Patrol on July 22, 1963, worked for three years for the Vallejo Fire Department; and

WHEREAS, Prior to his assignment to the Vallejo area on March 26, 1965, Gary Hughes was assigned to the San Francisco area, where he received a departmental commendation for bravery after having rescued a driver from a burning vehicle; and

WHEREAS, Officer Hughes was survived by his wife, Sharon, a daughter, and four sons; and

WHEREAS, Officer Hughes was known by his fellow officers for his dedication to the Department of the California Highway Patrol and to the protection of the citizens of our state; and

WHEREAS, It is appropriate that the eastbound Interstate Highway Route 80 and State Highway Route 37 interchange in the City of Vallejo be dedicated to the memory of California Highway Patrol Officer Gary L. Hughes, who made the ultimate sacrifice in his service to the people of the State of California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the portion of State Highway Route 113 between Interstate Highway Route 5 and Interstate Highway Route 80 is hereby officially designated the Vic Fazio Highway, the Rio Vista Bridge on State Highway Route 12 is hereby officially designated the Helen Madere Memorial Bridge, and the eastbound Interstate Highway Route 80 and State Highway Route 37 interchange in Vallejo is hereby officially designated the Gary L. Hughes Memorial Interchange; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with signing requirements for the state highway system, showing these special designations and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 125

Assembly Concurrent Resolution No. 148—Relative to the Marine Private First Class Eugene A. Obregon Interchange.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, While serving as an ammunition carrier with Golf Company, Third Battalion, Fifth Marine Regiment, First Marine Division (Reinforced), during the Korean War, Private First Class Eugene A. Obregon was killed in action on September 26, 1950; and

WHEREAS, While serving his country, Private First Class Obregon's machine-gun squad was temporarily pinned down by hostile fire; and during this time, he observed a fellow marine fall wounded in the line of fire; and

WHEREAS, Armed only with a pistol, Private First Class Obregon unhesitantly dashed from his cover position to the side of the fallen marine; and

WHEREAS, Firing his pistol with one hand as he ran, Private First Class Obregon grasped his comrade by the arm, and despite the great peril to himself, dragged the marine to the side of the road; and

WHEREAS, Still under enemy fire, Private First Class Obregon was bandaging the marine's wounds when hostile troops began approaching their position; and

WHEREAS, Quickly seizing the wounded marine's rifle, Private First Class Obregon placed his own body as a shield in front of the wounded marine and lay there firing accurately and effectively into the approaching enemy troops until he, himself, was fatally wounded by enemy machine-gun fire; and

WHEREAS, By his courageous fighting spirit, fortitude, and loyal devotion to duty, Private First Class Obregon enabled his fellow marines to rescue the wounded marine; and

WHEREAS, Private First Class Obregon gallantly and bravely gave his life for his country, thereby upholding the highest traditions of the United States Naval Service and the United States Marine Corps; and

WHEREAS, By fate and courage, Private First Class Eugene Obregon is one of the valiant Mexican-Americans to receive the Congressional Medal of Honor, the nation's highest military honor for bravery; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates the freeway interchange involving Interstate Highway Routes 5 and 10 and State Highway Routes 60 and 101, commonly referred to as the East Los Angeles Interchange, as the Marine Private First Class Eugene A. Obregon Interchange, in honor and in recognition of Congressional Medal of Honor recipient Private First Class Eugene A. Obregon, United States Marine Corps, for conspicuous gallantry and bravery while serving his country during the Korean War; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Director of Transportation and to the author for distribution.

RESOLUTION CHAPTER 126

Assembly Concurrent Resolution No. 163—Relative to the Department of the California Highway Patrol.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, The Department of the California Highway Patrol is in the process of rewriting a computerized recordkeeping system, known as the Management Information System of Terminal Evaluation Records (MISTER); and

WHEREAS, MISTER is used to collect information to enhance the department's ability to monitor the overall safety performance of motor carriers operating in California; and

WHEREAS, The department is participating in the Commercial Vehicle Information Systems and Networks (CVISN) pilot program; and

WHEREAS, CVISN is a collection of information systems and communication networks that support Commercial Vehicle Intelligent Transportation Systems; and

WHEREAS, CVISN's primary goal is to improve highway safety, while better serving the public and motor carrier industry; and

WHEREAS, The department leads the nation with the greatest number of inspection facilities, each equipped with an electronic preclearance program, entitled PrePass; and

WHEREAS, The PrePass program allows trucks to be weighed at highway speeds and have their state-required credentials verified electronically as they approach the inspection facility; and

WHEREAS, The PrePass program facilitates the movement of commercial vehicles throughout the state while also requiring them to be in optimum condition to participate; and

WHEREAS, The department, in anticipation of the implementation of the North American Free Trade Agreement (NAFTA) oversaw the construction of the Calexico and Otay Mesa Inspection Facilities located on the United States-Mexico border; and

WHEREAS, These inspection facilities provide a means for commercial vehicle inspection personnel to immediately identify and correct problems with commercial vehicles as they cross the border into California, thus providing for improved highway safety; and

WHEREAS, The department has provided invaluable assistance by responding to thousands of inquiries from the public, private industry, allied agencies, and legislative constituents, and this assistance has improved compliance with laws related to commercial vehicles, which, in turn, improves highway safety; and

WHEREAS, The department conducted over 360,000 commercial vehicle inspections during 1997, which resulted in a drop in fatal traffic collisions involving commercial vehicles; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That D. O. Helmick, the Commissioner of the California Highway Patrol, is hereby commended for the department's outstanding efforts to ensure that Californians traveling the state's highways are safe; and be it further

Resolved, That it is the intent of the Legislature to continue providing full support to the Department of the California Highway Patrol in furthering the development of technology to enhance the safety of commercial vehicles; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to D. O. Helmick, Commissioner, California Highway Patrol.

RESOLUTION CHAPTER 127

Assembly Concurrent Resolution No. 166—Relative to Fire Prevention Week.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, Every 16 seconds, a fire department responds to a fire somewhere in the United States; and

WHEREAS, Fire is one of the leading disaster-related causes of loss of life and property; fire threatens our communities, our forests, our livelihood, and our lives; and

WHEREAS, Nearly every year almost 5,000 men, women, and children lose their lives in fires, and nearly 80 percent of these deaths occur in homes; and

WHEREAS, Californians must not only remain vigilant in our efforts to prevent fires, but must also learn how to react quickly and sensibly when fires occur; and

WHEREAS, Many people do not understand the speed at which fire can spread, the intensity of its heat, or the toxic power of its smoke; a quick, decisive response often means the difference between life and death; and

WHEREAS, It is important to learn about fire, recognize how deadly a threat it is, and to react to it immediately; and

WHEREAS, Every family should develop a home escape plan; when a smoke or fire alarm sounds, everyone must react quickly; and

WHEREAS, When away from home, we need to make it a habit to locate the nearest exit in any building we occupy; and we must never reenter a burning building; and

WHEREAS, By following these basic safety rules, we can save lives and reduce the risks to California firefighters; thousands of firefighters in the United States are injured each year in the line of duty; and

WHEREAS, We Californians acknowledge the dedication of these valiant men and women and also declare that fire prevention and safety is a responsibility of all citizens; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California

recognizes the week of October 4 through October 10, 1998, as Fire Prevention Week; and be it further

Resolved, That all Californians are encouraged to honor the courageous members of our state's fire and emergency services by learning about the dangers posed by fire and by preparing their families to react safely to fires when they occur; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 128

Assembly Joint Resolution No. 49—Relative to National Historic Landmarks.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, Mission San Juan Capistrano possesses exceptional historic value in illustrating and interpreting events that resulted in the early exploration, settlement, and annexation of California to the United States; and

WHEREAS, Mission San Juan Capistrano embodies the architectural characteristics and distinguishing features of early California Mission style of architecture; and

WHEREAS, Founded November 1, 1776, the mission is the seventh in the California mission chain and the centerpiece of San Juan Capistrano's downtown; and

WHEREAS, The integrity and authenticity of the buildings and site features at Mission San Juan Capistrano collectively compose an entity of historic value; and

WHEREAS, The "Jewel of the Missions" occupies a 10-acre site and includes the beautiful central courtyard and numerous museum rooms and displays that bring the Spanish and prehistory eras to life; and

WHEREAS, The mission grounds are host to Serra Chapel, one of the oldest buildings in California, the ruins of the Great Stone Church, and other historic buildings; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California supports the efforts of Mission San Juan Capistrano to achieve recognition as a National Historic Landmark; and be it further

Resolved, That the Legislature respectfully memorializes the Secretary of the Interior to consider the nomination of Mission San Juan Capistrano for designation as a National Historic Landmark; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Secretary of the Interior.

RESOLUTION CHAPTER 129

Assembly Joint Resolution No. 67—Relative to radioactive depleted-uranium exposures to veterans during the Persian Gulf War.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, The people of California have a special affinity for, and are greatly indebted to, the many brave men and women in the United States Armed Forces who serve and have served to protect and defend our precious freedom; and

WHEREAS, California's strong commitment to its veterans must not wane or ever be forgotten; and

WHEREAS, Nearly 120,000 Californians answered their country's call and put themselves at great risk of personal injury and death by serving in the Persian Gulf War (1990–91); and

WHEREAS, With the outbreak of hostilities, commencing with the beginning of the airwar and Operation Desert Storm in mid-January 1991, depleted uranium was used for the first time in tank armor, missile and aircraft counterweights and navigational devices, and in tank, antiaircraft and antipersonnel artillery; and

WHEREAS, More than 940,000 30mm and 14,000 105mm and 120mm depleted-uranium rounds were fired in the Persian Gulf region that released between 300 and 800 tons of highly toxic and radioactive depleted uranium into the immediate environment; and

WHEREAS, Upon impact, as much as 70 percent of the uranium oxides are sent into a fine aerosol mist that contaminates the food and water supply and which can readily be inhaled into the lungs resulting in numerous immune-system-related diseases, cancers, congenital deformities, leukemia, and renal and hepatic dysfunctions; and

WHEREAS, Many of these diseases and illnesses are occurring in people throughout Iraq and among the soldiers of the United States, the United Kingdom, and other allies who served during the Persian Gulf War; and

WHEREAS, The basic question of whether the illnesses experienced by troops serving in the Persian Gulf War were the result of some specific and unusual exposure related to that service has not been answered conclusively; and

WHEREAS, The Presidential Advisory Committee on Gulf War Veterans' Illnesses recently released its report which found that the

Pentagon has not "acted credibly" in its handling of the issue of troop exposure to chemical weapons; and

WHEREAS, Six years after the Persian Gulf War, there is still deep controversy over the causes of the severe health problems observed in veterans; and

WHEREAS, Available information indicates that both the Pentagon and the Department of Defense had previous knowledge that troops were exposed to depleted uranium from the beginning of the Persian Gulf War; and

WHEREAS, More than 100,000 veterans of that war have registered with the United States Department of Veterans Affairs' Persian Gulf War Registry with medical complaints ranging from chronic fatigue, skin rashes, chronic headaches, memory loss, muscle and joint pain, neurological disorders, sleep disturbances, respiratory troubles, digestive ailments, cardiovascular problems, abnormal weight loss, menstrual disorders, fertility problems, miscarriages, and birth defects; and

WHEREAS, Responding to requests from veterans and their families and organizations such as the National Gulf War Resource Center, the Depleted Uranium Education Project, the Military Toxics Project, and Swords to Plowshares conducted several indepth investigations of Persian Gulf War exposures to depleted uranium that was fired from United States military tanks and aircraft, and have publicly demanded that a complete, comprehensive, and independent investigation into all potential causes of "Gulf War Syndrome" begin immediately; and

WHEREAS, Their investigation concluded that the United States Department of Defense has engaged in a deliberate attempt to avoid responsibility for consciously allowing the widespread exposure of hundreds of thousands of United States and allied coalition servicemen and servicewomen to more than 630,000 pounds of armor-piercing depleted-uranium penetrators released by United States tanks and aircraft during the Persian Gulf War; and

WHEREAS, Based on available information, as many as 400,000 Persian Gulf War veterans may have been contaminated by inhaling or ingesting depleted-uranium dust during combat operations, equipment-recovery operations on test-firing ranges, and postwar battlefield tours; and

WHEREAS, After Operation Desert Storm, the Department of Defense has intentionally understated the number of known veterans who were exposed to depleted uranium in friendly fire incidents, during recovery operations, as a result of the July 1991 Doha, Kuwait munitions fire, and through contact with contaminated areas and equipment; and

WHEREAS, The Department of Defense's action regarding depleted-uranium exposures has been characterized as a blatant disregard for existing laws and regulations, which means that the future use of depleted-uranium ammunition has taken precedence

over the need (1) to protect American troops from exposure to depleted uranium, and (2) to provide medical care to servicemen and servicewomen who have developed serious health problems due to that exposure; and

WHEREAS, The failure by the Department of Defense to train military personnel about depleted uranium puts men and women unnecessarily at risk in the event of the accidental or intentional release of depleted uranium from munitions; and

WHEREAS, Particularly at risk are personnel in combat units in the Persian Gulf, Bosnia, and Korea; and

WHEREAS, Since 1991, the course of research, investigation, and medical care for veterans exposed to depleted uranium has been sidetracked by the deliberate efforts of the Pentagon to downplay both the scope and severity of Persian Gulf War depleted-uranium exposures; now, therefore, be it

Resolved, by the Assembly and Senate of the State of California, jointly, That the Legislature proclaims its concern that the United States government has not fully met its moral obligation to attend to the health-care and family-support needs of its Persian Gulf War veterans suffering from the various health effects caused by, among other things, exposure to spent depleted-uranium ammunition; and be it further

Resolved, That the Congress is encouraged to immediately investigate whether United States Armed Forces currently deployed in the Persian Gulf region have been trained about depleted-uranium safety measures, have been issued appropriate protective equipment, and have been provided with radiometers to detect depleted-uranium contamination; and be it further

Resolved, That the Congress is encouraged to fund a nongovernmental organization or agency, with no ties to the Department of Defense, the Department of Energy, or the United States Department of Veterans Affairs, to conduct a thorough investigation of all Persian Gulf War hazardous exposures, including depleted uranium, and that this investigation should review and make recommendations to the Congress concerning research on the health effects of depleted uranium and current or planned antiarmor alternatives to depleted-uranium penetrators; and be it further

Resolved, That the Department of Defense is requested to send letters to all Persian Gulf War veterans who many have been exposed to depleted-uranium-contaminated areas and equipment confirming that exposure; and be it further

Resolved, That the Congress is encouraged to provide all Persian Gulf War veterans, their families, and civilians who have known or suspect exposures to depleted uranium, if they develop the known health effects of internal or external exposure to depleted uranium, with immediate medical care and disability benefits; and be it further

Resolved, That the Department of Defense is encouraged to do all of the following:

(1) Immediately begin training all military personnel, regardless of occupational specialty, about the use of depleted-uranium munitions and safety procedures required during contact with contaminated personnel or equipment.

(2) Expand its hazardous and toxic chemical training programs to all United States Armed Forces personnel.

(3) Expand research on the health effects of depleted uranium, especially on inhaled and ingested particle matters; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 130

Assembly Joint Resolution No. 70—Relative to Mai Thi Kim Nguyen's request for entry into the United States.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, Pursuant to the Immigration and Nationality Act, the Attorney General of the United States has the authority to "parole" an alien into the United States based on compelling humanitarian reasons to assure family unity or when it is otherwise in the public interest; and

WHEREAS, Mai Thi Kim Nguyen is married to Tam Tran, a former refugee from Vietnam who is now a legal immigrant residing in Sacramento, California, ably employed, and awaiting his eligibility for United States citizenship; and

WHEREAS, In 1994, Tam Tran's father, a Vietnamese war veteran who spent six years in a communist reeducation camp, qualified him and his family for refugee processing under the United States Orderly Departure Program for former reeducation camp detainees to resettle in the United States; and

WHEREAS, On April 20, 1998, Tam Tran's father lost a yearlong battle to cancer, leaving Tam Tran to care for his mother, six younger brothers and sisters, and three young nephews on a $1,200 per month restaurant manager's salary; and

WHEREAS, Tam Tran works full time, will not be able to reunite with his wife until the year 2000, when he is eligible to become a United States citizen, and needs her assistance in caring for his mother and his family to live a balanced life until the trauma of losing his father passes; and

WHEREAS, Tam Tran, who had met his future bride prior to emigrating to the United States, kept his promise to marry her when

he would be financially able to support her and returned to Vietnam in 1996 to marry Mai Thi Kim Nguyen and was under the mistaken belief that she would be permitted to return with him to the United States; and

WHEREAS, If Tam Tran had married his wife at the time his father and his family had acquired refugee status prior to their departure for the United States, she would have been eligible for admission and would have been permitted to join her husband; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the Attorney General of the United States, the Commissioner of the Immigration and Naturalization Service, and the President and the Congress of the United States to urge the Immigration and Naturalization Service to parole Mai Thi Kim Nguyen into the United States based on compelling humanitarian reasons to assure family unity among her husband's family members, all of whom were admitted to the United States as refugees as the children and relatives of Tam Tran's father, a former Vietnamese war veteran who fought on the side of the United States; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Attorney General of the United States, the Commissioner of the Immigration and Naturalization Service, the President and the Vice President of the United States, the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 131

Assembly Joint Resolution No. 72—Relative to computer date failures.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, With each passing day our nation moves closer to the new millennium and a potential global economic crisis if computer systems around the world are unable to successfully change over from the year 1999 to the year 2000; and

WHEREAS, In order to save precious memory space, older computers and programs utilized a two-digit abbreviated format, "98", to represent the year "1998" rather than a full four-digit format; and

WHEREAS, In the year 2000 many computer systems and devices controlled by embedded chip technology will malfunction or fail, interpreting "00" as 1900, rather than the year 2000; and

WHEREAS, Modern technology has advanced to the point where computerized transactions have become a part of our everyday lives, controlling financial transactions, military defense and air traffic control systems, security systems, medical equipment, rail and mass transit switching devices, and utility systems such as electricity, water, gas, and telecommunication; and

WHEREAS, The costs of reprogramming or replacing computer systems to address Year 2000 computer date problems, could be $50 billion to $600 billion nationwide; and

WHEREAS, If efforts to address Year 2000 issues are unsuccessful, it is estimated that litigation costs could range from $150 billion to $1.8 trillion dollars; and

WHEREAS, The failure to address Year 2000 issues could disrupt business transactions throughout the world economy, resulting in a major global recession equal to the recession caused by the oil shortage in the early 1970's; and

WHEREAS, The federal government, at the current rate of repair and replacement, is projected to complete only 60 percent of its mission critical systems by the Year 2000; and

WHEREAS, The failure of key government agencies to address Year 2000 issues could not only jeopardize national security, but result in civil disturbances in our major urban areas; and

WHEREAS, Unacceptably high numbers of our nation's 23 million small businesses remain unaware and are unprepared to correct Year 2000 problems; and

WHEREAS, The Year 2000 problem may be the single greatest threat to our nation's economic well-being; now therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the 105th Congress of the United States of America take immediate action, giving Year 2000 issues the highest priority, by providing the resources required to avert a national crisis caused by the Year 2000 problem; and be it further

Resolved, That a copy of this resolution be transmitted by the Chief Clerk of the Assembly to the Archivist of the United States, Washington, D.C., the President of the United States Senate, the Speaker of the House of Representatives of the United States, each member of California's delegation to Congress, and the presiding officer of each house of each state legislature in the United States of America.

RESOLUTION CHAPTER 132

Senate Concurrent Resolution No. 93—Relative to labor codes of conduct for California universities and colleges.

[Filed with Secretary of State August 20, 1998.]

WHEREAS, California workers and workers in other states have the right under federal and state law to a fair and safe workplace and to reasonable compensation; and

WHEREAS, Workers in other countries also have these rights or the expectation of these rights; and

WHEREAS, Despite federal and state law, sweatshops that utilize child labor and forced labor and other forms of worker exploitation, persist both domestically and in other countries; and

WHEREAS, Federal law, including the Trade Act of 1930, bans the importation of products made with indentured servitude, forced or slave labor into the United States; and

WHEREAS, The United States Department of Labor has recovered $14 million in illegally held back wages from 45,000 garment workers, including $2.9 million in back wages for 1997 alone; and

WHEREAS, The California Department of Industrial Relations has repeatedly uncovered sweatshops within the state in recent years; and

WHEREAS, Among industries that produce goods imported into the United States, the apparel and sporting goods industries have particular problems involving sweatshops and the exploitation of adults and children in the manufacture of some of their products; and

WHEREAS, The Apparel Industry Partnership, comprised of major retail companies, human rights groups, and labor groups, is seeking agreement on a code of conduct to reduce the use of sweatshops and child labor; and

WHEREAS, American consumers have repeatedly expressed an interest in avoiding goods made with exploited labor; and

WHEREAS, American consumers frequently have no ability to know whether a product has been made with exploited labor; and

WHEREAS, Informed consumer choice can be a powerful tool in the reduction of the use of sweatshops and exploited labor; and

WHEREAS, The mission of California universities and colleges includes, or ought to include, a commitment to operate and serve the people of California in a socially responsible manner; and

WHEREAS, Few universities and colleges, and none of those with the largest volume of merchandise sales, have labor codes of conduct covering companies that market their merchandise; and

WHEREAS, The market for college and university-licensed merchandise such as caps, T-shirts, sweatpants, and other items is valued at over $2 billion a year, with 80 percent of the market coming from apparel products; and

WHEREAS, Several universities, including most recently, Duke University and Brown University, have adopted codes of conduct specifically requiring companies that manufacture products bearing those universities' names to adhere to minimum labor standards both domestically and abroad; and

WHEREAS, The Association of Collegiate Licensing Officers (ACLO) is considering the matter of codes of conduct at its scheduled meetings; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature urges all California universities and colleges and the ACLO to adopt labor codes of conduct of a rigor equal to or exceeding that adopted by Duke University to ensure that university and college licensed merchandise is not made by sweatshops and exploited adult or child labor; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the President of the Board of Regents of the University of California, the Chancellor of the California Community College system, the Chancellor of the California State University system, and the chief executive officers of all private colleges and universities in the state.

RESOLUTION CHAPTER 133

Assembly Constitutional Amendment No. 10—A resolution to propose to the people of the State of California an amendment to the Constitution of the State, by amending Section 29 of Article XIII thereof, relating to taxation.

[Filed with Secretary of State August 21, 1998.]

Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1997–98 Regular Session commencing on the second day of December 1996, two-thirds of the membership of each house concurring, hereby proposes to the people of the State of California that the Constitution of the State be amended by amending Section 29 of Article XIII thereof to read:

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.

RESOLUTION CHAPTER 134

Assembly Concurrent Resolution No. 98—Relative to Native Americans.

[Filed with Secretary of State August 21, 1998.]

WHEREAS, Native Americans were among the earliest settlers of the territory of the United States, which is a land with an expansive and beautiful landscape of forests, prairies, mountains, valleys, deserts, and plateaus; and

WHEREAS, This Earth has been home to millions of native people since the beginning of known time; and

WHEREAS, Native Americans believe that they emerged into life and movement out of and into this place, and their rich oral narratives offer an ancient voice to life in this land before the arrival of immigrants from Europe, Africa, and Asia; and

WHEREAS, Long before the voyages of Christopher Columbus or the development of the first English settlement at Jamestown, diverse Native American groups and tribes developed their own language, literature, history, government, dance, music, art, agriculture, and architecture; and

WHEREAS, Native American languages were sophisticated and rich in words that denoted unique elements of Native American culture such as snowshoes, toboggans, tobacco, sun goggles, hammocks, and other items; and

WHEREAS, Approximately 300 different languages existed in the area that is now the United States and Canada, and there were many other dialects of these original languages; and

WHEREAS, Many Native Americans still speak their native languages, thus enriching the vocabularies of all peoples; and

WHEREAS, Native Americans gave our country words such as Massachusetts, Mississippi, Alabama, Ohio, Iowa, Dakota, Oklahoma, and Wyoming, and Native American languages also included a variety of words for agricultural produce native to this land, including, but not limited to, corn, squash, beans, potato, tomato, peanut, pumpkin, and watermelon; and

WHEREAS, Native Americans developed the first agricultural processes of our nation, including irrigation farming that made the deserts, prairies, and plateaus blossom with abundance; and

WHEREAS, The first literature and history of this land originated from ancient stories about plant, animal, mountain, river, and lake "peoples" who interacted with each other at the beginning of time

to make the world ready for human beings, and those stories remain a part of American culture to this day; and

WHEREAS, Rabbit, Coyote, Wolf, Bear, Mountain Lion, Eagle, Raven, and a host of other stories appear in Native American literature, and that literature speaks to us about a creative time that was and is a part of the collective past of the United States; and

WHEREAS, In ancient songs, Native Americans still sing of the creative time, and songs of mountains, rocks, rivers, lakes, forests, and birds ring out across the land to this very day; and

WHEREAS, It is through song, dance, and music that people recreate their attachment to the land they consider sacred, and that they believe was placed here at the beginning of time by a great and wondrous spirit that is manifested to this day in our country; and

WHEREAS, Native American forms of art and architecture have influenced our nation's heritage, and longhouses, quonsets, A-framed lodges, pueblos, hogans, tepees, and others are a part of the unique American experience; and

WHEREAS, Beadwork, quillwork, sculpture, painting, rock art, bows, arrows, quivers, dresses, leggings, coats, baskets, jewelry, and many other art forms emerged out of the Native American tradition and are still highly prized in our nation today; and

WHEREAS, For thousands of years before the arrival of other groups of settlers, Native Americans established intricate modes of transportation, communication, and commerce, and some of those forms of transportation, communication, and commerce spanned huge portions of North America from California to Texas, Washington to Minnesota, Oregon to Missouri, Louisiana to South Carolina, and Wisconsin to New York; and

WHEREAS, Native Americans established trails that are still used today as interstate, state, and county highways, and merchants, farmers, artists, hunters, and musicians used these and other arteries of travel to support their families and people; and

WHEREAS, Native Americans continue to traverse these routes, and remember through stories, songs, and music the significance of places and peoples that have affected their lives; and

WHEREAS, Native Americans have enjoyed many forms of government, and they continue to revere the principals that they have always held so dear to their cultures; and

WHEREAS, An emphasis on freedom, justice, patriotism, and representative government have always been elements of Native American culture, and Native Americans have shown their willingness to fight and die for this nation in foreign lands; and

WHEREAS, Native Americans honor the American flag at every pow wow and at many gatherings, and remember veterans through song, music, and dance; and

WHEREAS, Native Americans use songs to honor the men and women of this country who have fought for freedom; and

WHEREAS, Native Americans love the land that has nurtured their parents, grandparents, and unnamed elders since time began, and they honor the Earth that has brought life to the people since time immemorial; and

WHEREAS, Native Americans have given much to the United States, and in recognition of this fact, it is fitting that we return the honor and recognize Native Americans for all of their offerings to this beloved land; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California recognizes the fourth Friday in September as Native Americans Awareness Day; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 135

Assembly Concurrent Resolution No. 169—Relative to Neighborhood Watch Month.

[Filed with Secretary of State August 21, 1998.]

WHEREAS, California's communities recognize Neighborhood Watch as an effective means for keeping crime out of neighborhoods; and

WHEREAS, Neighbors and law enforcement agencies can work together to create an effective crimefighting team; and

WHEREAS, Approximately one residential burglary occurs every two minutes in the state of California; and

WHEREAS, The United States Attorney General has warned that juvenile crime arrests will more than double by the year 2010; and

WHEREAS, Much remains to be done to ensure the safety of our homes, our neighborhoods, and our communities for ourselves and our children; and

WHEREAS, The battle against crime will not be won by individuals acting alone; and

WHEREAS, Neighborhood Watch teaches children respect for the law, reinforces community values, and encourages the kind of individual responsibility that makes for healthy, creative neighborhoods populated by safer and happier citizens; and

WHEREAS, Neighborhood Watch programs put neighbors on guard for criminal activity that may occur near their homes, encourage the reporting of suspicious activity to the police, and provide escorts for elderly or vulnerable citizens; and

WHEREAS, The growth of Neighborhood Watch programs is truly encouraging; and

WHEREAS, Neighborhood Watch programs play a significant role and encompass a broad range of activities in making neighborhoods safe; and

WHEREAS, Because of the significance and scope of Neighborhood Watch programs in making neighborhoods safe, it is important that the State of California recognize the many contributions of the residents of this state and of law enforcement officers; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the month of August 1998 be declared Neighborhood Watch Month; and be it further

Resolved, that on the occasion of Neighborhood Watch Month, the Legislature of the State of California commends those California residents who have participated in Neighborhood Watch programs for distinguished service to their communities by uniting with their neighbors and law enforcement to keep their neighborhoods safe, and encourages all Californians to join in this effective means of fighting crime in their neighborhoods.

RESOLUTION CHAPTER 136

Assembly Concurrent Resolution No. 174—Relative to the women's rights movement.

[Filed with Secretary of State August 21, 1998.]

WHEREAS, 1998 will mark the 150th anniversary of the women's rights movement in the United States, a bold and courageous civil rights movement that began in 1848 in Seneca Falls, New York, at the first Women's Rights Convention ever held; and

WHEREAS, The Declaration of Sentiments issued by that convention represents a work as fundamental to our nation's commitment to liberty and personal freedom as does our Declaration of Independence; and

WHEREAS, That declaration launched a movement that has changed this nation and the hopes of its women irrevocably; and

WHEREAS, The resulting women's rights movement has had a profound and undeniable impact on all aspects of American life, and has opened new and well-deserved opportunities for women in all fields of endeavor, including, among others, commerce, athletics, business, education, religion, the arts, and scientific exploration; and

WHEREAS, The full history of this century and a half of efforts now spanning seven generations of unceasing work to achieve equality for fully half the American population still, regrettably, remains unknown and unrecognized by our nation's citizens; and

WHEREAS, The girls and boys of today, together, have lives far richer and far fairer as a direct result of the women's rights movement, yet they have scant opportunity to know the heroes and lessons of this vital movement through the textbooks of most classrooms; and

WHEREAS, The 21st century will find an ever-increasing need for both women and men to share in the fundamental responsibilities for our national life and the blessings that must result from full and equal participation in society; and

WHEREAS, There still remain substantial barriers to the full equality of America's women before our freedom as a nation can be called complete; and

WHEREAS, March 1998 is National Women's History Month, celebrated with the theme of "Living the Legacy of Women's Rights"; and

WHEREAS, 1998 will be widely recognized and celebrated as the 150th anniversary of the women's rights movement under the national theme, "Living the Legacy: Women's Rights Movement 1848-1998"; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California calls on educators, government officials, businesses, and all California citizens to mark the 150th anniversary of the women's rights movement in the United States with appropriate programs, ceremonies, and activities that will remember with gratitude those who have contributed to the nation we were envisioned and created to be, where all have by right a position of equality, fairness, justice, and freedom, in the society of the United States of America; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 137

Assembly Concurrent Resolution No. 106—Relative to the state ski industry.

[Filed with Secretary of State August 25, 1998.]

WHEREAS, California is home to 38 snow skiing and snowboarding alpine and cross-country resorts; and

WHEREAS, Five million skiers and snowboarders visit these resorts annually; and

WHEREAS, The ski industry employs over 15,000 workers every year; and

WHEREAS, California's mountain ski resorts are committed to safety and have expended tremendous energy and expense educating their guests about skier and snowboarder safety; and

WHEREAS, The ski resort industry has improved safety on the slopes by establishing family ski areas and has increased the number of monitors on the slopes; and

WHEREAS, The birth of the snowboard industry has made a tremendous impact on the number of annual visitors to California resort slopes; and

WHEREAS, The number of beginner lessons given to snowboarders has increased by 53 percent; and

WHEREAS, The overall rate of reported skiing injuries has declined by 50 percent during the last 25 years; and

WHEREAS, California's ski resort personnel are committed to safety and are some of the most qualified in the world; and

WHEREAS, Hundreds of professional ski personnel have performed extraordinary acts of courage and heroism while aiding and rescuing stranded skiers; now, therefor, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the California Legislature encourages all Californians to join with the Legislature in commending the state ski industry for their service, dedication, and commitment to the safety of the skiers of California; and be it further.

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 138

Assembly Concurrent Resolution No. 107—Relative to the California State Gold Panning Championship.

[Filed with Secretary of State August 25, 1998.]

WHEREAS, The first California State Gold Panning Championship was held in Auburn, California at the Gold Expo on June 1, 1994; and

WHEREAS, The California State Gold Panning Championship is sponsored by the Mother Lode Goldhounds, the only mining club in northern California to hold a gold fair and gold panning events; and

WHEREAS, Belinda Wright represented the United States at the World Gold Panning Competition held in August 1997; and

WHEREAS, A World Gold Panning competition is scheduled to be held in 1998; and

WHEREAS, The California Gold Discovery Sesquicentennial celebration will also occur in 1998; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California

hereby proclaims and certifies the California State Gold Panning Championship as an official state event; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 139

Assembly Concurrent Resolution No. 130—Relative to the 1998 World Gold Panning Championships.

[Filed with Secretary of State August 25, 1998.]

WHEREAS, The World Gold Panning Championships will take place at the Marshall Gold Discovery State Historic Park in Coloma, California from September 28 to October 4, 1998, inclusive; and

WHEREAS, The World Gold Panning Championships are sponsored by the State of California and the Gold Discovery Park Association; and

WHEREAS, Members from 20 participating nations from around the world are expected to attend this event, bringing with them the excitement reminiscent of the California Gold Rush; and

WHEREAS, The 150th Anniversary of the discovery of gold in California also occurs in 1998; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby proclaims and certifies the 1998 World Gold Panning Championships as an official state event; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 140

Assembly Concurrent Resolution No. 172—Relative to the CHP Officer Scott M. Greenly Memorial Freeway.

[Filed with Secretary of State August 25, 1998.]

WHEREAS, Scott M. Greenly, at age 10, moved with his family from Los Gatos, California to Newark, California, where he subsequently graduated from Newark High School in 1984, and

WHEREAS, Prior to beginning his career with the Department of the California Highway Patrol, Scott M. Greenly attended Chabot College and the College of Alameda, and

WHEREAS, Scott M. Greenly began his career with the Department of the California Highway Patrol on January 30, 1995; and

WHEREAS, Officer Greenly graduated from the California Highway Patrol Motorcycle Training Course on August 22, 1997; and

WHEREAS, On January 7, 1998, Officer Greenly, at age 31, was killed in the line of duty; and

WHEREAS, While conducting an enforcement stop on northbound State Highway Route 85, north of the Quito Road overcrossing in the City of Saratoga, Officer Greenly was struck and fatally injured by an errant driver; and

WHEREAS, The driver was subsequently arrested and charged with second degree murder of a police officer; and

WHEREAS, Officer Greenly was survived by his parents, Phyllis and Ron Bell, his four siblings, Mark, Denyse, Cassandra, and Karen, and his fiancée, Christine Nielsen; and

WHEREAS, Officer Greenly was known by his fellow officers for his dedication to the Department of the California Highway Patrol and to the protection of the citizens of this state; and

WHEREAS, It is appropriate that the northbound and southbound portions of State Highway Route 85 between Quito Road and Prospect Road in the City of Saratoga be dedicated to the memory of this officer who made the ultimate sacrifice in the service of the people of this state, now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the northbound and southbound portions of State Route 85 between Quito Road and Prospect Road in the City of Saratoga be officially designated the "CHP Officer Scott M. Greenly Memorial Freeway"; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing that special designation, and, upon receiving donations from nonstate sources sufficient to cover that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Department of Transportation and to the author for appropriate distribution.

RESOLUTION CHAPTER 141

Assembly Joint Resolution No. 43—Relative to cardiovascular disease.

[Filed with Secretary of State August 25, 1998.]

WHEREAS, According to the American Heart Association, the following facts apply to cardiovascular diseases:

(a) Cardiovascular diseases, including heart attack, stroke, and high blood pressure, are the number one killer of women in the United States.

(b) One in five females has some form of major cardiovascular disease.

(c) Over 479,000 women die from cardiovascular diseases each year compared to 246,000 women who die from all cancer deaths combined; in addition, five times as many females die from heart attacks as breast cancer.

(d) African American women in the range of 35 to 74 years of age are more than twice as likely to die from a heart attack as white women.

(e) In 1992, cardiovascular diseases resulted in the death of more than 43,800 women in California; and

WHEREAS, The American Heart Association is dedicated to reducing disability and death from cardiovascular disease and stroke; and

WHEREAS, The American Heart Association funds biomedical research and conducts a variety of preventive education programs in communities throughout California; and

WHEREAS, The American Heart Association applauds the efforts of members of Congress in introducing legislation, the Women's Cardiovascular Diseases Research and Prevention Act and related measures, in order to provide funding to expand and intensify research, education, and outreach programs for heart disease; and

WHEREAS, The American Heart Association supports the five-year plan of the President of the United States to seek $400 million to fund research with regard to six health categories, including cardiovascular disease ; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and Congress to support the Women's Cardiovascular Diseases Research and Prevention Act before the Congress in order to provide funding to expand and intensify research, education, and outreach programs for heart disease; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 142

Assembly Joint Resolution No. 48—Relative to medical savings accounts.

[Filed with Secretary of State August 25, 1998.]

WHEREAS, The federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) authorized eligible individuals to claim a deduction from gross income subject to federal income taxes for amounts deposited during the taxable year to a medical savings account; and

WHEREAS, The Legislature provided conformity to that law under the Personal Income Tax Law by approving Chapter 954 of the Statutes of 1996; and

WHEREAS, The federal law contains a "cut-off year" which prohibits the deduction of contributions by otherwise eligible individuals after that cut-off year unless the individual had already established a medical savings account or became covered under a high deductible health plan as an employee of a medical savings account participating employer; and

WHEREAS, The cut-off year is calendar year 2000, or sooner if the number of participants in medical savings accounts exceeds a certain number determined by a formula under the federal law; and

WHEREAS, Health insurance, generally, may not be purchased with amounts deposited in a medical savings account; and

WHEREAS, Health insurance premiums are not otherwise deductible by individuals; now, therefore, be it

Resolved by the Assembly, and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to remove the limitation on the number of persons who may have a medical savings account, to permit funds in a medical savings account to be used to pay premiums on any employee's health care medical plan or provide that those health care plan premiums be otherwise deductible, and to make the medical saving account provisions permanent ; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the President pro Tempore of the Senate, and each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 143

Assembly Concurrent Resolution No. 91—Relative to European American Heritage Month.

[Filed with Secretary of State August 26, 1998.]

WHEREAS, There are approximately 188 million European Americans in the United States, and 16 million Californians of European ancestry; and

WHEREAS, This diaspora is diverse in religious beliefs; and

WHEREAS, This diaspora represents diverse ethnicities including Anglo-Saxon, Armenian, Basque, Celtic, Gallic, Germanic, Greek, Iberian, Italic, Scandinavian, and Slavic; and

WHEREAS, This diaspora is diverse in country of origin and comes from an area commonly referred to as Europe that is bounded by land west of the Ural Mountains, north of the Mediterranean Sea, east of the Atlantic Ocean, and south of the Arctic Ocean; and

WHEREAS, This diaspora has led to the establishment of public and private institutions in the United States that are praised by people everywhere in the world; and

WHEREAS, The tremendous contributions by European Americans in the field of engineering, science, and medicine have changed the face of this planet; and

WHEREAS, The European American population is projected to be a minority by the year 2000 in California and by 2050 in the United States; and

WHEREAS, Currently there is no official recognition by governmental agencies and public schools of a specially designated heritage month for European Americans; and

WHEREAS, There is official recognition for other national origin, continent origin, and ethnic groups in California; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That in the interest of fairness and diversity, the Legislature of the State of California recognizes the month of October 1998 as European American Heritage Month to honor and celebrate our European American heritage; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 144

Senate Concurrent Resolution No. 85—Relative to a California art works exhibition.

[Filed with Secretary of State August 28, 1998.]

WHEREAS, California owns a treasure of art works, among which are valuable historic paintings rarely seen by the public, thus denying Californians the opportunity to view and enjoy what is an important part of the richness of the state; and

WHEREAS, California's unique history, geography, and culture, expressed through the work of its historic and contemporary artists from the day of statehood to the present, constitutes a unique resource; and

WHEREAS, The widespread exposure of the works of California's artists is in keeping with the ongoing efforts by the Legislature to foster the arts; and

WHEREAS, The beginning of a new millennium offers a unique moment to view the changing face of California as seen through its artists, and provides an opportunity to demonstrate our ongoing commitment to support the growth of cultural resources throughout our communities statewide; and

WHEREAS, The arts serve as a valuable educational tool for us all, but especially for our youth, whose creativity, imagination, and intelligence will be stimulated by this unique view of their state's history, rich culture, and achievement; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That a traveling exhibition, comprising both California's historic and contemporary paintings, and representing the state's diverse artistic population and geography, and changing rural and urban landscape, be shown at appropriate selected venues within the state; and be it further

Resolved, That California's school children, along with community college and university students, play an active role, attending and contributing to the exhibition; and be it further

Resolved, That a public and private partnership be formed to carry out the intent of this resolution and that the required funding be secured through donations from supporting organizations and individuals; and be it further

Resolved, That appropriate state agencies, including, but not limited to, the California Arts Council, the State Library, the California State Archives, the Department of Parks and Recreation, the Department of Education, the Department of General Services, the Office of Child Development and Education, and the Office of Tourism within the Trade and Commerce Agency, are encouraged to contribute their respective expertise and in-kind assistance to the partnership to help ensure the success of this venture; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the California Arts Council, the State Library, the California State Archives, the Department of Parks and Recreation,

the Department of Education, the Department of General Services, and the Office of Tourism within the Trade and Commerce Agency.

RESOLUTION CHAPTER 145

Senate Concurrent Resolution No. 99—Relative to the Quentin L. Kopp Freeway.

[Filed with Secretary of State August 28, 1998.]

WHEREAS, Quentin L. Kopp was elected to the California State Senate on November 4, 1986, as the first nonincumbent, Independent candidate since 1878, was reelected to a third term in 1994, and is the first Independent to be reelected as an Independent to the Legislature in the history of California; and

WHEREAS, Senator Kopp was first elected to the San Francisco Board of Supervisors in November 1971, was reelected a supervisor four times, and was president of that board from 1976 to 1978 and in 1982; and

WHEREAS, Senator Kopp has been a leader on virtually every local governmental policymaking body that affects the San Francisco Bay Area, was a founding member of the San Francisco-San Mateo Joint County Task Force from 1982 to 1986, was San Francisco's delegate to the Board of Directors of the County Supervisors Association of California (CSAC) from 1976 to 1986, and served as President of CSAC from 1980 to 1981; and

WHEREAS, Senator Kopp was the San Francisco Board of Supervisors' representative to the Metropolitan Transportation Commission (MTC) from 1976 to 1986, served as Chairman of the MTC from 1983 to 1985, was a member of the Board of Directors of the Bay Area Rapid Transit District (BART) from 1973 to 1974, and was a member of the Board of Directors of the Golden Gate Bridge, Highway and Transportation District from 1977 to 1986 and vice president of that district from 1984 to 1986; and

WHEREAS, Senator Kopp was the San Francisco Board of Supervisors' representative to the Bay Area Air Quality Management District from 1978 to 1984, served as that board's representative to the San Francisco Bay Conservation and Development Commission (BCDC) from 1972 to 1978, and was President of the Peninsula Division of the League of California Cities from 1976 to 1977 and a member of the league's board of directors from 1977 to 1979; and

WHEREAS, Senator Kopp was the originator and Chairman of the Bay Area Super Bowl Task Force, which successfully brought Super Bowl XIX to Stanford Stadium in January 1985; and

WHEREAS, Senator Kopp was named Chairman of the Senate Committee on Transportation on March 24, 1988, a position he has continuously held; and

WHEREAS, Senator Kopp has worked as a tireless and successful advocate for the development and improvement of all modes of transportation in California; and

WHEREAS, As Chairman of the Senate Committee on Transportation, Senator Kopp has shown unparalleled leadership, vision, and commitment in devising and enacting all manner of transportation measures, policies, and principles, including transportation finance, transit expansion and coordination, seismic safety retrofit, bridge and highway construction, rehabilitation and replacement, transportation planning and programming reform, highway safety, water transit, and intercity and high-speed rail service; and

WHEREAS, Having had an extended tenure as Chairman of Subcommittee No. 2 of the Senate Committee on Budget and Fiscal Review, which is responsible for the funding and budget oversight of the state's major transportation agencies, Senator Kopp has facilitated the efficient and effective use of transportation funds and personnel; and

WHEREAS, Senator Kopp has championed the return of transportation decisionmaking authority and responsibility from the federal government to the states, and from the state to regional and local agencies who best understand the needs and priorities of the public within their jurisdictions; and

WHEREAS, It is fitting to acknowledge and memorialize the transportation and related public accomplishments and achievements of Senator Kopp; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby designates State Highway Route 380 in San Mateo County as the "Quentin L. Kopp Freeway"; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system showing the special designation, and upon receiving donations from nonstate sources covering the cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Department of Transportation and to the author for appropriate distribution.

RESOLUTION CHAPTER 146

Senate Joint Resolution No. 39—Relative to health insurance for military retirees.

[Filed with Secretary of State August 28, 1998.]

WHEREAS, Military retirees who have served honorably for 20 or more years constitute a significant part of the aging population in the United States; and

WHEREAS, These retirees were encouraged to make the United States Armed Forces a career, in part by the promise of lifetime health care for themselves and their families; and

WHEREAS, Prior to the age of 65 years, these retirees are provided health services by the United States Department of Defense's TRICARE Prime program, but those retirees who reach the age of 65 years lose a significant portion of the promised health care due to Medicare eligibility; and

WHEREAS, Many of these retirees are also unable to access military treatment facilities for health care and life maintenance medications because they live in areas where there are no military treatment facilities, or where these facilities have downsized so significantly that available space for care has become nonexistent; and

WHEREAS, The loss of access to health care services provided by the military has resulted in the government breaking its promise of lifetime health care; and

WHEREAS, Without continued affordable health care, including pharmaceuticals, these retirees have limited access to quality health care, and significantly less care than other retired federal civilians have under the Federal Employees Health Benefits Program (FEHBP); and

WHEREAS, It is necessary to enact legislation that would restore health care benefits equitable with those of other retired federal workers; and

WHEREAS, Several proposals to meet this requirement are currently under consideration before the United States Congress, and the federal Department of Defense (DoD) and Department of Health and Human Services (HHS). Of these proposals, the federal government has already begun to establish demonstration projects around the country to be conducted over the next three years, including one in California, which would allow Medicare to reimburse DoD for the costs of providing military retirees and their dependents health care. This project would allow a limited number of Medicare-eligible beneficiaries to enroll in DoD's TRICARE Prime program and receive all of their health care under that program; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California calls upon the United States government to maintain its commitment to America's military retirees by providing lifetime health care for military retirees over the age of 65 years; and be it further

Resolved, That the Legislature respectfully memorializes the President and Congress of the United States to provide America's military retirees and their families with the health care they were promised, by enacting comprehensive legislation that affords military retirees the ability to access health care either through military treatment facilities or through the military's network of health care providers, as well as legislation to require opening the Federal Employees Health Benefit Program (FEHBP) to those uniformed services beneficiaries who are eligible for Medicare, on the same basis and conditions that apply to retired federal civilian employees; and be it further

Resolved, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact any other appropriate legislation that would address the concerns set forth in this measure; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, the Chairpersons of the House and Senate Committees on Aging, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 147

Senate Joint Resolution No. 40—Relative to salvaged vehicles.

[Filed with Secretary of State August 28, 1998.]

WHEREAS, The United States Congress is now considering legislation to redefine "total loss salvage vehicles"; and

WHEREAS, The federal legislation under consideration includes a different definition of a salvaged vehicle than that contained in California law; and

WHEREAS, The federal legislation under consideration could undermine consumer protections in many states, including California; and

WHEREAS, California law contains provisions that broadly define a "total loss salvage vehicle"; and

WHEREAS, California law requires vehicles that come under the state's definition of a "total loss salvage vehicle" to be subject to a certification, disclosure, and inspection process; and

WHEREAS, California law makes it a criminal offense for failure to comply with disclosure requirements relating to the transfer of ownership of a "total loss salvage vehicle"; and

WHEREAS, The federal legislation, if adopted by California, would potentially reduce the number of vehicles that are required to comply with California's current certification, disclosure, and inspection requirements; and

WHEREAS, Some portion of approximately 150,000 total loss salvaged vehicles are returned to California's streets each year; and

WHEREAS, Nonetheless, given the interstate nature of vehicle transactions, there is potentially some benefit to a national minimum standard for salvage vehicles, which national standard is the aim of the federal legislation; now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to ensure that federal legislation pertaining to salvage vehicles include (1) explicit language permitting the states to adopt additional, more stringent requirements for the disclosure of a vehicle's history; (2) a requirement that each transferor of a motor vehicle disclose to the transferee in writing, at or before the time of sale, whether the vehicle is a salvage vehicle or a rebuilt salvage vehicle; and (3) language explicitly leaving in place any and all California laws providing consumer protections and allowing the state Attorney General to bring criminal and civil actions to recover restitution and civil penalties against sellers who intentionally sell former salvage vehicles without full disclosure; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 148

Senate Joint Resolution No. 45—Relative to federal transportation funding.

[Filed with Secretary of State August 28, 1998.]

WHEREAS, Trade between Mexico and the United States is estimated to increase by 93 percent by the year 2000, and the state's border road network is already overburdened; and

WHEREAS, Southern California has five port-of-entry border crossings; and

WHEREAS, Between the years 1983 and 1991, nontruck vehicular traffic increased 138 percent, truck traffic increased 257 percent, and this traffic is only expected to increase further; and

WHEREAS, In 1995, the transportation system carried over 27 million northbound auto crossings with an estimated 83 million passengers, 690,000 northbound truck crossings, and nearly 16 million pedestrian crossings; and

WHEREAS, Currently, border crossing delays are 45 minutes during off-peak times and over 2.5 hours during peak periods; and

WHEREAS, Because of delays and other problems, on average, only 2 percent of all vehicles crossing from Mexico into the United States actually are inspected; and

WHEREAS, The Otay Mesa customs facility, the third most-used commercial crossing along the United States-Mexico border, has truck traffic of over 2,700 vehicles a day, which is only expected to increase as the year 2001 approaches and the North American Free Trade Agreement (NAFTA) takes full effect; and

WHEREAS, Nearly 800 trucks cross the border at Calexico every day, and according to the Department of Transportation (CalTrans), this number is expected to exceed 1,600 daily within the next 10 years; and

WHEREAS, The only connection between the Otay Mesa port of entry and the interstate highway system is a five-mile section of Otay Mesa Road, which is a four-lane local arterial highway; and

WHEREAS, The connection between Calexico East at State Highway Route 7 and the interstate highway system is State Highway Route 98, a two-lane road, and State Highway Route 111, a four-lane road; and

WHEREAS, Completion of State Highway Route 905 would allow commercial and international traffic to bypass congested surface streets, thus avoiding traffic delays and reducing the high percentage of trucks and the high rate of accidents on the local arterial system; and

WHEREAS, Completion of State Highway Routes 7 and 905 would allow commercial traffic to bypass State Highway Route 98 and directly access the interstate highway system, thereby avoiding the circuitous route either through developed areas of the City of Calexico, including residential areas, a school, and a commercial area, or on two-lane country roads outside the city; now, therefore, be it

Resolved, By the Senate and Assembly of the State of California, jointly, That the Legislature respectfully memorializes the Secretary of the United States Department of Transportation to provide full federal transportation funding from the federal funds appropriated for the coordinated border infrastructure program established under Section 1119 of the Transportation Equity Act for the 21st Century (P.L. 105-178), and from no other source, to ensure safe and cost-effective transportation into the 21st century through

California's ports of entry into Mexico, including the timely completion of State Highway Routes 7 and 905; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Secretary of the United States Department of Transportation.

RESOLUTION CHAPTER 149

Assembly Concurrent Resolution No. 64—Relative to clean fuel fleet vehicles.

[Filed with Secretary of State September 1, 1998.]

WHEREAS, The United States Environmental Protection Agency (EPA) seeks to accelerate the deployment of clean fuel fleet vehicles, as defined in the Clean Air Act Amendments of 1990 (P.L. 101-549), through the use of nonmonetary incentives instead of mandatory standards; and

WHEREAS, Federal regulations adopted by the EPA in 1993, and codified in Part 88 (commencing with Section 88.101-94) of Title 40 of the Code of Federal Regulations, exempt inherently low emission vehicles (ILEVs) in fleets from high occupancy vehicle (HOV) lane access restrictions on federal highways; and

WHEREAS, Four years later, this state has not yet conformed to those federal regulations; and

WHEREAS, This state's urban air quality is the most persistently polluted and unhealthful in the United States; and

WHEREAS, In most instances, existing HOV lanes in this state are underused by comparison with adjoining mixed use traffic lanes, resulting in less than optimal traffic flow; and

WHEREAS, EPA regulations affirm a state's authority to establish fleet ILEV identification requirements, in addition to EPA requirements, that are necessary and appropriate to facilitate enforcement; and

WHEREAS, The incremental cost to the state of implementing the federal fleet ILEV exemption from HOV lane access restrictions is minimal; and

WHEREAS, The people of this state want and need healthful air quality, and are well served by incentive-based approaches to encourage early deployment of cleaner fleet vehicles at little or no cost to the state; and

WHEREAS, The people of this state support the intent of the federal Clean Fuel Fleet Vehicle program and the role of fleet ILEVs in establishing broad acceptance of cleaner vehicle choices by businesses and the motoring public in this state; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That the Department of Transportation, the Department of the California Highway Patrol, and the Department of Motor Vehicles are requested to immediately recognize and enforce the HOV lane access exemption created in federal regulation for fleet ILEVs by the EPA; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Director of Transportation, the Commissioner of the Department of the California Highway Patrol, and the Director of Motor Vehicles.

RESOLUTION CHAPTER 150

Assembly Concurrent Resolution No. 92—Relative to historic U.S. Highway Route 101.

[Filed with Secretary of State September 1, 1998.]

WHEREAS, U.S. Highway Route 101, a 935-mile highway spanning the southern and northern borders of California, has played a major role in the development of this state during the 20th century; and

WHEREAS, U.S. Highway Route 101, is one of the earliest state highway routes in California recommended by the Bureau of Highways map of 1896, and was adopted into the state highway system in 1909; and

WHEREAS, In 1912, construction began on U.S. Highway Route 101 as one of two north-south major highways connecting California's counties; and

WHEREAS, In 1925, the federal government became involved in highway route designations across the nation by assigning odd numbers to roadways running north and south. Beginning on the Atlantic coast, the lowest number commenced and increased progressively from the east toward the west until the road along the Pacific Coast received a formal enumeration as U.S. Highway Route 101; and

WHEREAS, U.S. Highway Route 101, in addition to its importance in transportation, has outstanding natural, cultural, historic, and scenic qualities; and

WHEREAS, Over the years, U.S. Highway Route 101 has conveyed commerce and pleasure travelers whose needs were met by nearby cities and counties; and

WHEREAS, The response to these needs resulted in the development of adjacent environments or the retention of open spaces and established the unique character of those areas; and

WHEREAS, Though supplanted by another roadway as the state's primary north–south highway, segments of the original U.S. Highway

Route 101 remain, although many are no longer identified as such; and

WHEREAS, The original U.S. Highway Route 101 served as the main street of many California cities and towns along its length on the coast and, though no longer designated as former U.S. Highway Route 101, these sections represent both state and local historic significance; and

WHEREAS, Some portions of the highway have been turned over to local governments and are no longer within the state highway system; and

WHEREAS, Without formal designation, the history and contribution of these segments of U.S. Highway Route 101 to the development of the state would remain less known; and

WHEREAS, It is fitting that a means to designate these historic sections of the original U.S. Highway Route 101 be established; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature recognizes the remaining sections of the original U.S. Highway Route 101 for their historical significance and importance in the development of California; and be it further

Resolved, That the Department of Transportation is requested, upon application by a local agency or a private group to identify any former section of the original U.S. Highway Route 101 that is still a publicly maintained highway and is within the jurisdiction of the department, but is not designated as having formerly been part of the original U.S. Highway Route 101, to designate that section of highway as Historic U.S. Highway Route 101; and be it further

Resolved, That the department is requested to determine the cost of appropriate highway markers or signs consistent with signing requirements for the state highway system showing this special Historic U.S. Highway Route 101 designation and, upon receiving donations from nonstate sources for that cost, to erect those highway markers or signs on those former sections of the original U.S. Highway Route 101 that are part of the state highway system; and be it further

Resolved, That the department is requested to develop consistent signing standards for the placement of highway markers or signs, identifying sections of the original U.S. Highway 101, which may be used by cities or counties to designate the historical significance of those portions of the route that are within their respective jurisdictions; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Director of Transportation and to the author for appropriate distribution.

RESOLUTION CHAPTER 151

Assembly Concurrent Resolution No. 133—Relative to Korean War Veterans Memorial Bridge.

[Filed with Secretary of State September 1, 1998.]

WHEREAS, Only five years had passed since the end of the World War II when a war-weary United States once again found itself engaged in a major international conflict, and on June 25, 1950, the United States again helped to ward off aggression when the communist government of North Korea launched an attack into South Korea; and

WHEREAS, The subsequent three-year struggle against aggression resulted in the reestablishment of the earlier boundaries between North Korea and South Korea because the 1.5 million United States men and women who served during this conflict had been successful in their mission to protect democracy and bring about the negotiation of an armistice; and

WHEREAS, The Korean War also is known as the "Forgotten War" because too many of our nation's veterans have been forgotten; and

WHEREAS, Our nation's Korean War veterans served their country with honor and dignity and we, as Californians, should memorialize the legacy of their courage; and

WHEREAS, A Korean War Veterans Memorial Bridge will honor those men and women who served our country during the Korean War for their struggles and sacrifices and for supporting the cause of freedom, and the bridge also will serve as a reminder of our veterans who are missing in action (MIA's) and the 8,130 in all who never made it home, and to the families and friends of these veterans; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates Bridge No. 10-0289, located 4.95 miles north of the Sonoma-Mendocino County line on State Highway Route 101, also known as U.S. Highway 101, as the Korean War Veterans Memorial Bridge; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system showing the special designation, and upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Department of Transportation.

RESOLUTION CHAPTER 152

Assembly Concurrent Resolution No. 155—Relative to breastfeeding.

[Filed with Secretary of State September 1, 1998.]

WHEREAS, Extensive research, especially in recent years, documents diverse and compelling advantages to infants, mothers, families, and society from breastfeeding and the use of human milk for infant feeding, including health, nutritional, immunologic, developmental, psychological, social, economic, and environmental benefits; and

WHEREAS, Epidemiologic research shows that human milk and breastfeeding of infants provide advantages with regard to general health, growth, and development, while significantly decreasing risk for a large number of acute and chronic diseases. Research in the United States, Canada, Europe, and other developed countries, among predominantly middle-class populations, provides strong evidence that human milk feeding decreases the incidence, or severity, or both, of diarrhea, lower respiratory infection, otitis media, bacteremia, bacterial meningitis, botulism, urinary tract infection, and necrotizing enterocolitis. In addition, a number of studies show a possible protective effect of human milk feeding against sudden infant death syndrome, insulin-dependent diabetes mellitus, Crohn's disease, ulcerative colitis, lymphoma, allergic diseases, and other chronic digestive diseases. Breastfeeding has also been related to possible enhancement of cognitive development; and

WHEREAS, A number of studies also indicate potential health benefits for mothers, as it has long been acknowledged that breastfeeding increases levels of oxytocin, resulting in less postpartum bleeding and more rapid uterine involution, and lactational amenorrhea causes less menstrual blood loss over the months after delivery. Recent research demonstrates that lactating women have an earlier return to prepregnancy weight, delayed resumption of ovulation with increased child spacing, improved bone remineralization postpartum with reduction in hip fractures in the postmenopausal period, and reduced risk of ovarian cancer and premenopausal breast cancer; and

WHEREAS, In addition to individual health benefits, breastfeeding provides significant social and economic benefits to the nation, including reduced health care costs and reduced employee absenteeism for care attributable to child illness. The significantly lower incidence of illness in the breast-fed infant allows the parents more time to give attention to siblings and other family duties, and reduces parental absence from work and lost income. The direct economic benefits to the family are also significant. It has been

estimated, for example, that in 1993, the cost of purchasing infant formula for the first year after birth was $855; and

WHEREAS, Increasing the rates of breastfeeding initiation and duration is a national health objective, and one of the goals of Healthy People 2000, a national prevention initiative to improve the health of all Americans. The target of Healthy People 2000 is to increase to at least 75 percent the proportion of mothers who breast feed their babies in the early postpartum period and to at least 50 percent the proportion who continue breastfeeding until their babies are five to six months old. Although breastfeeding rates have increased slightly since 1990, the percentage of women currently electing to breast feed their babies is still lower than levels reported in the mid-1980's, and is far below the Healthy People 2000 goal. In 1995, 59.4 percent of women in the United States were breastfeeding either exclusively or in combination with formula feeding at the time of hospital discharge, but only 21.6 percent of mothers were nursing at six months, and many of these were supplementing with formula; and

WHEREAS, The American Academy of Pediatrics recommends exclusive breastfeeding as ideal nutrition, sufficient to support optimal growth and development for approximately the first six months of life, with the gradual introduction of iron-enriched solid foods in the second half of the first year to complement the breast milk diet. It is recommended that breastfeeding continue for at least 12 months, and thereafter for as long as mutually desired; and

WHEREAS, Hundreds of millions of dollars continue to be spent by the United States government to purchase artificial milk for babies. Yet, one study indicated that the national Women, Infants, and Children (WIC) nutrition program could save $93 million a month in lower food package costs alone if all mothers breast fed their infants. According to a report released in the fall of 1996, compared to formula-fed babies, each breast-fed baby saved $478 in WIC and other health care costs for the first six months of life. The International Journal of Gynecology and Obstetrics reported in 1994 that, in the United States, two to four billion dollars could be saved in annual health care costs if women breast fed their infants for as little as 12 weeks; and

WHEREAS, Employers, employees, and society benefit by supporting a mother's decision to breast feed and by helping reduce the obstacles of continuing to do so after returning to work. A study by a major health maintenance organization found that infants who were breast fed for a minimum of six months experienced $1,435 less in health care claims than formula-fed infants, and a study from the University of California at Los Angeles School of Nursing found that breast-fed babies have 35 percent fewer illnesses than formula-fed babies, and their nursing moms have a corresponding 27 percent lower absence rate; and

WHEREAS, Employers clearly benefit by having lower health care costs, less employee absenteeism, and better morale, and employees

are also more likely to return to work earlier from maternity leave if they do not foresee complications with being able to continue to breast feed; and

WHEREAS, Multiple obstacles reduce the number of mothers that continue breastfeeding after returning to work, including finding an adequate place for feeding or expressing milk, finding the time or flexibility in breaks or working hours, having a place to store the milk, and concerns about the acceptability of these activities; and

WHEREAS, Most employers are sympathetic to the needs of nursing mothers, and are very supportive of their employees when it is brought to their attention, however, employees must be encouraged to discuss their needs with their employers; and

WHEREAS, Employees can successfully continue to provide for the needs of their children, given adequate facilities and support. These adequate facilities include a clean, private place, with a chair, and electrical outlet, with access to running water and refrigerated storage; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature encourages the State of California and all California employers to strongly support and encourage the practice of breastfeeding by striving to accommodate the needs of employees, and by ensuring that employees are provided with adequate facilities for breastfeeding, or the expressing of milk for their children; and be it further

Resolved, That the Legislature respectfully memorializes the Governor to declare by executive order that all State of California employees shall be provided with adequate facilities for breastfeeding, or the expressing of milk; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 153

Assembly Concurrent Resolution No. 161—Relative to the George H. Cox Memorial Bridge.

[Filed with Secretary of State September 1, 1998.]

WHEREAS, George H. Cox was a lifelong resident of Humboldt County and lived in Bridgeville from 1912 until his death in 1966; and

WHEREAS, In 1917, Mr. Cox purchased his father's general merchandise store, "Henry Cox and Son," along with the surrounding area, approximately 104 acres with buildings, known as the Town of Bridgeville; and

WHEREAS, Mr. Cox sponsored and promoted Bridgeville community events and activities including roller skating and dances

in the upstairs of the livery stables, baseball teams, nine large rodeos, and a movie theater; and

WHEREAS, Mr. Cox was a compassionate and generous landlord to his tenants who worked at ranching and logging jobs that were seasonal and dependent on the weather and the markets, keeping some rents to only $5 in the late 1940's and the 1950's; and

WHEREAS, Mr. Cox also loaned equipment to anyone who needed it and sent goods out on request and waited for payment; and

WHEREAS, Mr. Cox served as the Bridgeville postmaster for many years and helped numerous residents by writing letters, checks, money orders, and whatever else was required; and

WHEREAS, From 1919 until his ill health and retirement in the early 1960's, Mr. Cox supplied the local office of the United States Weather Bureau with highway conditions in the area, rain measurements, and Van Duzen River levels; and

WHEREAS, From 1912, when he first arrived in Bridgeville, until his death in 1966, Mr. Cox in some way touched the lives of every person who lived in the Bridgeville area; and

WHEREAS, There are many people today who still remember him with great fondness; and

WHEREAS, In recognition of his many contributions to the people and to the Town of Bridgeville, it is appropriate to designate, in the memory of Mr. Cox, the Bridgeville Bridge, #4-293, on State Highway Route 36, which spans the Van Duzen River at Bridgeville; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Bridgeville Bridge, #4-293, on State Highway Route 36 is hereby officially designated the George H. Cox Memorial Bridge; and

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing this special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 154

Assembly Concurrent Resolution No. 171—Relative to the Military Servicewomen's Memorial Highway.

[Filed with Secretary of State September 1, 1998.]

WHEREAS, Women have been serving in the defense of the United States since its founding over 220 years ago, often when duty assignments and promotion potential were severely limited, when family responsibility and military careers were not compatible, when women were not granted the same benefits and legal protection as men, and when women who died in the line of duty were not granted a military burial; and

WHEREAS, Despite defending this nation both in times of peace and during war, contributions of these women have gone largely unrecognized and unrewarded; and

WHEREAS, During the Revolutionary War, women heroically provided medical aid to soldiers, which led to women becoming official members of the United States military through the Army Nurse Corps and the Navy Nurse Corps; and

WHEREAS, Women made up 7 percent, or 41,000 members, of the United States armed forces in the Persian Gulf War; and

WHEREAS, Over 2,000,000 women have served the United States as members of the military; and

WHEREAS, Women continue to serve their country within all branches of the military; and

WHEREAS, No memorial currently exists in the State of California to commemorate the service of these courageous women; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the segment of State Highway Route 101 between the Ralston Ave. Exit and the Santa Clara County Line is hereby officially designated the Military Servicewomen's Memorial Highway; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 155

Assembly Concurrent Resolution No. 184—Relative to Pancreatic Cancer Awareness Month.

[Filed with Secretary of State September 1, 1998.]

WHEREAS, Pancreatic cancer is the fifth leading cancer killer; and

WHEREAS, Over 27,000 people will die of pancreatic cancer this year; and

WHEREAS, By the time pancreatic cancer is able to be diagnosed, it is usually too late for a promising outcome; and

WHEREAS, The average life expectancy of an individual, after having been diagnosed as having pancreatic cancer, is from three to six months; and

WHEREAS, Spending on research of pancreatic cancer is down from $11,000,000 in 1993 to an estimated $8,500,000 in 1997; and

WHEREAS, The 1997 annual spending per fatality for pancreatic cancer is $305, while the annual per fatality spending for research on breast cancer is $9,000 and $38,700 with respect to Acquired Immune Deficiency Syndrome (AIDS); now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the month of August 1998 is hereby declared Pancreatic Cancer Awareness Month in California.

RESOLUTION CHAPTER 156

Assembly Joint Resolution No. 76—Relative to a just and peaceful resolution of the situation in Cyprus.

[Filed with Secretary of State September 1, 1998.]

WHEREAS, The Republic of Cyprus has been illegally divided and occupied by Turkish forces since 1974 in violation of United Nations resolutions; and

WHEREAS, The international community and the United States government have repeatedly called for the speedy withdrawal of all foreign troops from the territory of Cyprus; and

WHEREAS, There are internationally acceptable means to resolve the situation in Cyprus, including the proposal for the demilitarization of Cyprus and the establishment of a multinational force to ensure the security of both the Greek and Turkish communities in Cyprus, which has been endorsed by the international community including the United States government; and

WHEREAS, It is recognized that the prospect of Cyprus accession to the European Union will serve as a catalyst for resolving the situation in Cyprus; and

WHEREAS, A peaceful, just, and lasting solution to the Cyprus problem would greatly benefit the security and the political, economic, and social well-being of all Cypriots, as well as contribute to improved relations between Greece and Turkey; and

WHEREAS, The United Nations has repeatedly stated the parameters for such a solution, most recently in United Nations

Security Council Resolution 1092, adopted on December 23, 1996, with United States support; and

WHEREAS, In spite of unsuccessful high level meetings in 1997 and the United States led mediation efforts in May 1998, the situation has led to a stalemate in the efforts of the international community to reach a Cyprus settlement; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the solution of the situation in Cyprus must be based on the parameters and principles set forth in House Concurrent Resolution No. 81 and Senate Concurrent Resolution No. 41 both of the 105th Congress and the aforementioned United Nations Security Council Resolution 1092, regarding the situation in Cyprus; and be it further

Resolved, That the Assembly and Senate of the State of California, jointly, call the United States to continue their active support in finding a just, viable, and lasting solution to the Cyprus problem within the United Nations framework and according to the said parameters; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 157

Senate Concurrent Resolution No. 44—Relative to apportionment of income for franchise tax purposes.

[Filed with Secretary of State September 3, 1998.]

WHEREAS, Under the Bank and Corporation Tax Law (Part 11 commencing with Section 23001) of Division 2 of the Revenue and Taxation Code), a franchise tax is imposed on any corporation doing business within the limits of this state and not expressly exempted from taxation by the provisions of the California Constitution or the Revenue and Taxation Code, including aerospace corporations; and

WHEREAS, That tax is measured by income and, in the case of a business with income derived from or attributable to sources both within and without this state, the business income is apportioned between this state and other jurisdictions for tax purposes in accordance with a specified formula based on the property, payroll, and sales of the business within and without this state; and

WHEREAS, Section 25135 of the Revenue and Taxation Code provides, for purposes of that apportionment formula, that sales of tangible personal property to the United States government are

treated differently from sales delivered or shipped to any other purchaser; and

WHEREAS, The aerospace industry makes substantial sales to the United States government; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislative Analyst is hereby requested to do each of the following: investigate whether there are any existing factors that strongly indicate that sales to the United States government should be treated differently from sales to all other parties in the state for purposes of the franchise tax apportionment formula; determine what are the historical reasons for the current formulation; study the broad implications of treating those sales to the United States government differently from all other sales in the franchise tax apportionment formula; and determine what is the current level of sales to the United States government that are exported from, and imported to, California; and be it further

Resolved, That the Legislative Analyst shall report his or her findings to the Legislature on or before December 15, 1998.

RESOLUTION CHAPTER 158

Senate Concurrent Resolution No. 97—Relative to the Officer Dave Chetcuti Memorial Highway.

[Filed with Secretary of State September 3, 1998.]

WHEREAS, David John Chetcuti was born to John and Lily Chetcuti in San Francisco on March 5, 1955, the youngest of seven children, graduated from Capuchino High School in San Bruno, and, in November 1983, joined the Millbrae Police Department as a Reserve Police Officer; and

WHEREAS, Dave Chetcuti was hired in April 1987 as a Deputy Sheriff with the Alameda County Sheriff's Department and, in December 1987, shortly after graduating from Alameda County's 91st Basic Academy, accepted a position with the Millbrae Police Department; and

WHEREAS, During a distinguished 11-year career in the Millbrae Police Department, Officer Dave Chetcuti consistently performed as an outstanding officer and leader, with assignments as a patrol officer, field training officer and, most recently, traffic officer; and

WHEREAS, Officer Chetcuti was the first officer from the Millbrae Police Department to receive recognition for the highest number of drunk driving arrests during the "Avoid the 23" Campaign and, in 1995, he received the department's Lifesaving Award for initiating cardiopulmonary resuscitation on a heart attack victim; and

WHEREAS, Officer Chetcuti earned more than 33 written commendations and was named in countless news stories describing his arrests, investigations, and extraordinary achievements, and his personnel file contained numerous congratulations, testimonials, and expressions of appreciation and gratitude from members of the public and organizations who benefited from his abiding commitment to duty and service; and

WHEREAS, On April 25, 1998, Officer Dave Chetcuti was the first to respond to a call for aid from a fellow officer involved in a traffic stop and shooting on State Highway Route 101 in the vicinity of the Millbrae Avenue off ramp, and as Officer Chetcuti arrived on his motorcycle and approached the suspected vehicle and driver, shots were fired, striking Officer Chetcuti and fatally wounding him, but not before he was able to return fire at the suspect; and

WHEREAS, Officer Dave Chetcuti was the first police officer killed in San Mateo County in the last decade and the first officer of the Millbrae Police Department slain in the department's 50-year history; and

WHEREAS, Officer Dave Chetcuti, survived by his wife, Gail, and three sons, David Jr., John, and Rick, was a loving husband and devoted father; and

WHEREAS, Officer Chetcuti was active in the Millbrae Police Officers' Association, previously serving as that organization's president, was a member of the Peninsula Peace Officers' Association, and was a consummate professional and a deeply respected police officer; and

WHEREAS, As a result of his dedication to his duties, Officer Chetcuti lost his life while protecting the citizens of Millbrae and this state, and the memory of Officer Chetcuti continues to exemplify for other peace officers throughout the state the highest standard of duty and selflessness; and

WHEREAS, It is appropriate that a portion of State Highway Route 101 be dedicated to the memory of Officer Dave Chetcuti; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby designates the portion of State Highway Route 101 that extends from the San Francisco International Airport to and including the Broadway-Burlingame exit as the Officer Dave Chetcuti Memorial Highway; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing the special designation and, upon receiving donations from nonstate sources covering that cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 159

Assembly Concurrent Resolution No. 20—Relative to the University of California.

[Filed with Secretary of State September 4, 1998.]

WHEREAS, The San Joaquin Valley has tremendous agricultural and environmental resources; and

WHEREAS, No University of California campus is located south of Davis or north of Los Angeles in the San Joaquin Valley; and

WHEREAS, The Virginia Smith Trust and the Cyril Smith Trust have provided generous support and vision toward the development of a bright future of the valley; and

WHEREAS, Young people in the San Joaquin Valley are less than half as likely as their statewide counterparts to attend the University of California; and

WHEREAS, The decision of the Regents of the University of California to build a campus in the San Joaquin Valley means that professionals in education, social sciences, and technical fields will have the same opportunities for continuing education as their counterparts in other areas of the state; and

WHEREAS, A new university of California campus in Merced County will benefit valley communities through partnerships with local schools and hospital and community outreach programs, guest lecturers and cultural performances, and extension courses for lifelong learning and career advancement; and

WHEREAS, The university is a rich regional resource that provides an essential public resource; and

WHEREAS, The establishment of the first University of California campus of the 21st century brings many special research opportunities; and

WHEREAS, The naming of the chancellor is essential for the development of the University of California at Merced. The chancellor will take the lead in establishing the vision and academic focus for the campus, recruiting outstanding faculty, developing programs to attract qualified students, integrating the campus plan with the development of the surrounding community, and assuring the timely design and construction of the campus; and

WHEREAS, During the 1997–98 Legislative Session substantial progress has been made in the development of the campus, including all of the following:

(1) Establishment of a base budget for the University of California at Merced. In the 1997–98 fiscal year budget, $4,900,000 was set aside for the planning of the campus and the introduction of educational programs into the San Joaquin Valley. The Assembly and Senate Budget Committees have approved $9,900,000 for allocation in the Budget Act of 1998.

(2) Appointment of a new senior associate to the President of the University of California who is specifically responsible for coordinating the planning for the University of California's 10th campus.

(3) Opening of a new University Relations Office at Merced College to provide outreach to the Merced community and assist in the future development of the campus.

(4) Submittal of the official letter of intent to expand to the California Postsecondary Education Commission for its consideration.

(5) Establishment of a community planning program that includes the University of California, the City of Merced, the County of Merced, the Merced Irrigation District, and the Virginia Smith and Cyril Smith Trusts. This is an initial step toward the development of the Long-Range Development Plan, the environmental review, and the master infrastructure construction and financing plan.

(6) Preparation of a draft academic plan. This plan is currently under review by the President of the University of California.

(7) Allocation of $59,000,000 in federal and state highway dollars toward the development of the campus parkway that will connect the state highway to the campus community; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature respectfully requests the President of the University of California to report to the Legislature by January 1, 1999, regarding the next steps that will be undertaken to develop the Merced campus of the University of California, including, but not limited to, the timeline for appointment of the chancellor; and be it further

Resolved, That the Chief Clerk transmit a copy of this resolution to each member of the Regents of the University of California.

RESOLUTION CHAPTER 160

Assembly Concurrent Resolution No. 176—Relative to the Raymond A. Nachand Memorial Bridge.

[Filed with Secretary of State September 4, 1998.]

WHEREAS, Raymond A. Nachand was born in Alton, Illinois on August 30, 1918; and

WHEREAS, He subsequently moved to Burnt Ranch, California in 1937 and graduated from Hoopa High School in 1938; and

WHEREAS, Mr. Nachand held numerous jobs in the aeronautical industry during and after World War II in southern California; and

WHEREAS, Mr. Nachand subsequently returned to Burnt Ranch where at various times he worked for Moss Mill Lumber Company, drove the schoolbus from Burnt Ranch to Weaverville, and worked for the former California Division of Highways (now the Department of Transportation) for 22 years, retiring in 1973; and

WHEREAS, Mr. Nachand volunteered for many worthwhile causes in his community and, in this connection, held the positions of firefighter, church elder, hospice worker, and friend to all; and

WHEREAS, In 1976, Mr. Nachand and his wife, JoAnn, opened their richly endowed Ironside Museum in Hawkins Bar to "preserve our heritage and historical interest"; and

WHEREAS, The museum continues to be visited by persons who come to Hawkins Bar from around the world; and

WHEREAS, Mr. Nachand passed away on May 17, 1997, at the age of 78 years at his home after several years of illness; and

WHEREAS, Mr. Nachand was widely known and respected by members of his community and is sadly missed by all who knew him; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby designates Bridge No. 5-81 located over the Trinity River in Trinity County as the "Raymond A. Nachand Memorial Bridge"; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing that special designation, and, upon receiving donations from nonstate sources sufficient to cover that cost, to erect those plaques and markers; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Department of Transportation and to the author for appropriate distribution.

RESOLUTION CHAPTER 161

Assembly Concurrent Resolution No. 180—Relative to Historic U.S. Highway Route 40.

[Filed with Secretary of State September 4, 1998.]

WHEREAS, Former U.S. Highway Route 40 played an important part in the development of the transportation routes into California over what is now known as Donner Pass, beginning with the

Overland Emigrant Trail and followed by its successors, including the Dutch Flat and Donner Lake Wagon Road, the Lincoln Highway, the Victory Highway, U.S. Highway Route 40, and current Interstate Highway Route 80; and

WHEREAS, U.S. Highway Route 40 served as part of the Lincoln Highway in 1926, and as part of the Atlantic City to San Francisco Transcontinental Federal Highway system in 1927; and

WHEREAS, The historic Donner Summit Bridge is part of former U.S. Highway Route 40; and

WHEREAS, Recognition of this historic highway will educate the public concerning California's development and foster the economic health of small communities and business located along the highway; and

WHEREAS, It is fitting that a means to designate historic sections of former U.S. Highway Route 40 be established; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the remaining sections of former U.S. Highway Route 40 are hereby recognized for their historic importance in the development of California; and be it further

Resolved, That the Department of Transportation is requested, upon application by an appropriate local governmental agency or agencies, to identify any section of former U.S. Highway Route 40 that is still a publicly maintained highway and that is of interest to the applicant, and to designate that section of highway as "Historic U.S. Highway Route 40"; and be it further

Resolved, That the department is requested to determine the cost of appropriate highway markers or signs for Historic U.S. Highway Route 40 consistent with signing requirements for the state highway system showing the special designation and, upon receiving donations from nonstate sources concerning that cost, to erect those highway markers or signs on the portions of former U.S. Highway Route 40 that are part of the state highway system; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 162

Assembly Joint Resolution No. 58—Relative to the research and development tax credit.

[Filed with Secretary of State September 4, 1998.]

WHEREAS, The federal research and development tax credit expires on June 30, 1998; and

WHEREAS, The research and development tax credit enjoys broad, bipartisan support and provides a critical, effective, and proven incentive for companies to increase their investment in United States-based research; and

WHEREAS, Since Congress first enacted the research and development tax credit in 1981, two industries important to California's economy, the pharmaceutical and electronic industries, increased their research spending from $10.5 billion to more than $64.2 billion; and

WHEREAS, The research conducted by these industries alone has led to the development of many new drugs and medicines and has helped propel us into the Information Age; and

WHEREAS, While other countries continue to offer tax incentives and subsidies to businesses competing with United States companies, it is important that Congress continue to encourage investment in innovative technologies; and

WHEREAS, The structure of the research and development tax credit ensures that companies that benefit from the credit will continue to increase their research and development spending from year to year and also continue to add high-paying American jobs; now therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature of the State of California respectfully memorializes the President and the Congress of the United States to enact legislation to permanently extend the research and tax credit, as proposed in H.R. 2819; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 163

Assembly Joint Resolution No. 71—Relative to the Hmong Veterans' Naturalization Act of 1997.

[Filed with Secretary of State September 4, 1998.]

WHEREAS, The Immigration and Nationality Act prohibits a person from being naturalized as a citizen of the United States unless that person demonstrates an understanding of the English language (8 U.S.C.A. Sec. 1423(a)(1)); and

WHEREAS, Many Hmongs are unable to become citizens because they are unable to learn to speak and write English because translation is particularly difficult due to the fact that the Hmong

people did not have a written language of their own until the 1950's; and

WHEREAS, Hmong veterans served with a special guerrilla unit operating from a base in Laos in support of the United States in Southeast Asia from February 28, 1961, until September 18, 1978; and

WHEREAS, The Honorable Bruce Vento has introduced H.R. 371, known as the Hmong Veterans' Naturalization Act of 1997, which is cosponsored by members of both political parties, including, but not limited to, Congress Members Richard Pombo, Cal Dooley, George Radonovich, Gary Condit, Vic Fazio, and Robert Matsui from California; and

WHEREAS, The Hmong Veterans' Naturalization Act of 1997 would waive the English language requirements of the Immigration and Nationality Act for those Hmong veterans who served in the special guerrilla units in Southeast Asia, as well as for their spouses or widows; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature respectfully memorializes the Congress and the President of the United States to enact H.R. 371; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 164

Assembly Joint Resolution No. 77—Relative to the Forest Tax Relief Act.

[Filed with Secretary of State September 4, 1998.]

WHEREAS, In 1996, Congress authorized the United States Forest Service to charge visitors to the Angeles, Cleveland, Los Padres, and San Bernardino national forests daily and yearly fees to obtain a permit to park on forest land, and issue citations for the failure to obtain such a permit; and

WHEREAS, Citizens of California pay for the operation and maintenance of the national forests through the payment of federal income taxes, and are again charged a fee to park in those forests, which amounts to a double tax; and

WHEREAS, The imposition of parking fees at the Angeles, Cleveland, Los Padres, and San Bernardino national forests constitutes an unjustified tax that has the effect of deterring individuals from visiting and enjoying our national forests, and is

producing only half of the revenues projected for parking fees at those national forests; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the Legislature respectfully memorializes the President and the Congress of the United States to enact the "Forest Tax Relief Act," which would repeal legislation authorizing the United States Forest Service to implement a pilot program charging visitors of the Angeles, Cleveland, Los Padres, and San Bernardino national forests specified daily and yearly fees to park on national forest lands; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the United States House of Representatives, and to each Senator and Representative from California in the Congress of the United States.

RESOLUTION CHAPTER 165

Assembly Concurrent Resolution No. 142—Relative to Military Families Recognition Day.

[Filed with Secretary of State September 9, 1998.]

WHEREAS, Military families play an integral role in ensuring the effectiveness of America's Armed Forces; and

WHEREAS, Without fanfare, military families selflessly provide behind-the-scenes support to service members, their units, and their commands worldwide; and

WHEREAS, Their devotion to their loved ones, the military, and their country is unfaltering; and

WHEREAS, Military families frequently and bravely bid farewell as wives, husbands, children, and parents depart for missions in far-off, and often hostile areas; and

WHEREAS, Military families face abrupt separations which often create single-parent families to endure not only the absence of a loved one but the hardship of rearing children alone for extended periods of time; and

WHEREAS, Military families are uprooted from their hometowns and moved to foreign soil for tours in isolated locations away from friends; and

WHEREAS, As they adjust to conditions around the world, military families learn to do without many of the conveniences that most Americans consider part of a basic lifestyle; and

WHEREAS, Military families quickly and adeptly transform unfamiliar quarters into welcoming homes, forming bonds of

friendship with others in the unit, sharing in their hopes, dreams, and aspirations; and

WHEREAS, Military families in foreign lands act as goodwill ambassadors, representing all Americans; and

WHEREAS, Military families are committed to preserving freedom and democracy for all of us, and these families provide the continuity and stability essential to the well-being of our soldiers, sailors, airmen, Marines, and the members of our Coast Guard, National Guard, and Reserves; and

WHEREAS, We have long recognized the importance of families in the retention and readiness of military members; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature, in honor of military families throughout the world who are supporting the American men and women who defend the cause of freedom at home and abroad, hereby designates Saturday, November 21, 1998, as Military Families Recognition Day.

RESOLUTION CHAPTER 166

Assembly Concurrent Resolution No. 145—Relative to Physical Therapy Month.

[Filed with Secretary of State September 9, 1998.]

WHEREAS, Physical therapy, a hands-on health care profession, is a career in which physical therapists have the rewarding opportunity to make a positive difference in the quality of life for many individuals; and

WHEREAS, Physical therapy takes a personal and direct approach to meeting an individual's health needs and wants, and along with the patient and other health care practitioners, the physical therapist shares the hard work and commitment needed to accomplish each individual patient's goals; in this respect, physical therapists truly share the challenge of improving the patient's health, and likewise they take pride in their patient's successes; and

WHEREAS, For people with health problems resulting from an injury or a disease, the physical therapist assists in the recovery process making them stronger, relieving their pain, and helping them to regain use of an affected limb or to relearn activities of daily living such as walking, dressing, or bathing; and

WHEREAS, Another role of the physical therapist is keeping people well and safe from injury, and physical therapists do this by teaching people the importance of fitness and showing them how to avoid hurting their bodies at work or play; and

WHEREAS, By designing and supervising individualized conditioning programs, physical therapy promotes optimal physical performance and enables health conscious people to increase their overall fitness level and muscular strength and endurance; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That October 1998 shall be proclaimed as Physical Therapy Month, to commend the field of physical therapy and those professionals who plan and administer treatment in order to restore bodily functions, relieve pain, and prevent or limit disability to those suffering from a disabling injury or disease.

RESOLUTION CHAPTER 167

Assembly Concurrent Resolution No. 190—Relative to Workplace Fitness Month.

[Filed with Secretary of State September 9, 1998.]

WHEREAS, The federal government has commissioned numerous reports regarding employee wellness, and has concluded that physical fitness plays an important role in the overall health of employees; and

WHEREAS, The Legislature has a history of supporting efforts that recognize and encourage physical fitness; and

WHEREAS, The Governor has charged California's Council on Physical Fitness and Sports to develop physical fitness goals for Californians of all ages, and to facilitate collaboration among federal, state, and local agencies, education, business and industry, and others, in the promotion of physical fitness; and

WHEREAS, The 1996 Report of the Surgeon General on Physical Activity and Health concluded that people of all ages, both male and female, benefit from regular physical exercise, and identified the workplace as an important place for people to be able to do so; and

WHEREAS, The Governor's Executive Order W-119-95 directed that a comprehensive Statewide Work Site Health Promotion and Illness Prevention Program, including exercise programs, be established for all state employee, and

WHEREAS, Physical activity and fitness programs in the workplace, including onsite exercise facilities and exercise classes, reimbursable membership fees in health clubs, YMCA's and YWCA's, informal walking clubs, formal fitness challenges and campaigns, and flexible health benefits that include exercise-related activities, provide a mechanism for reaching large numbers of adults; and

WHEREAS, Regular exercise helps reduce the chance of heart disease for all people, which is the leading cause of death in the nation; and

WHEREAS, Employees who participate in a fitness program are reported to be more alert, generally have an improved ability to perform, have a better rapport with coworkers and supervisors, are more relaxed and patient, are less tired at work, have enhanced self-esteem, and have fewer grievances, accidents, and absences than nonparticipants; and

WHEREAS, The evidence pointing to the success of the fitness programs in improving employee health practices, reducing medical and disability costs, and improving productivity is indisputable; and

WHEREAS, The Legislature supports the promotion of employee fitness programs as a means of reducing absenteeism and employee turnover, while bolstering employee moral and commitment; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims the month of October 1998 as Workplace Fitness Month in California, and encourages all Californians to participate in regular exercise programs and physical activity for healthier lives and improved work performance and satisfaction; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor.

RESOLUTION CHAPTER 168

Senate Concurrent Resolution No. 98—Relative to state employee merit awards.

[Filed with Secretary of State September 15, 1998.]

WHEREAS, An award of $5,000 has already been made to Ruth Caouette and Dan R. Cope, Consumer Affairs, for a proposal resulting in annual savings of $62,050, recommending wall certificates be made available to registered nurses during the years 1972 through 1989. In order to lower the cost of implementing new service or contacting all nurses through a newsletter, the service of providing wall certificates to nurses is offered at the time of license renewal. License renewals are sent to nurses every two years, approximately three months prior to their expiration dates. Registered nurses are increasingly working in independent settings in which it is desirable to display a wall certificate; and

WHEREAS, An award of $5,000 has already been made to Cheryl A. Martin, Employment Development Department, for a proposal resulting in annual savings of $52,736, recommending adopting a

newly designed form "Recomputation/Wage Document Request" for use on electronic mail (e-mail), requesting wage documents from Unemployment Insurance and Disability Insurance offices. This e-mail form eliminates expensive long-distance telephone calls and provides three to four times more documents or cases; and

WHEREAS, An award of $5,000 has already been made to Larry V. Herrback, California State Lottery, for a proposal resulting in annual savings of $116,519, recommending a "new base" for the Lottery Playcenters to accommodate handicapped players. This new base has a writing surface of 18 inches to 24 inches from the ground and enables a wheelchair-bound individual to fill out a playslip; and

WHEREAS, An award of $5,000 has already been made to Willard D. Brisley, Department of Transportation, for a proposal resulting in total net savings of $79,400, recommending reducing the Caltrans/consultant developed size plan sheets by 50 percent for the plans specifications and estimates and public agency reviews during a designed phase on projects. Over 784 projects and 20,200 total plan sheets were processed in 1991–92, and reducing the size will provide substantial benefits; and

WHEREAS, An award of $5,000 has already been made to James V. Miller, Department of Transportation, for a proposal resulting in annual savings of $250,000, recommending adopting the "K-Rail adaption" (connecting the rail, type K (K-Rail)) to the existing metal beam guardrail and eliminating the need for temporary crash cushions in construction zones. Normally the crash cushions protect the exposed end of the K-Rail and absorb the energy when impacted by an errant vehicle. An average temporary sand-filled crash cushion array is made up of 12 barrels and costs about $3,000 each. This new K-Rail adaption replaces the current practice and the need for maintenance or repair, and provides substantial savings; and

WHEREAS, An award of $5,000 has already been made to Harry J. Weekley, Jr., Department of Water Resources, for a proposal resulting in annual savings of $90,482, recommending adopting a designed and fabricated power nozzle removal/transfer cart at the William E. Warne Powerplant. This powerplant is part of the West Branch State Aqueduct, which carries water to Los Angeles and other coastal cities. The plants' two turbines generate about 78 megawatts of electricity. Water enters the Warne Powerplant through the two Pelton wheel turbines with six nozzles each. These nozzles are eight feet long, 42 inches in diameter, and weigh 15,000 pounds. In the design of the plant there was no provision for removing the nozzles from the wheel turbines for refurbishing. It would take a five-person crew approximately 240 personnel hours to remove and reinstall one nozzle. Using Mr. Weekley's transfer cart takes a three-person crew six hours per nozzle, thus saving 2,340 hours and eliminating serious injury to crew members. This idea made a tremendous impact on reducing the time refurbishing the nozzles and improving safety and operations of the State Water Project; and

WHEREAS, An award of $5,000 has already been made to David W. Leask and Robert A. Miller, Department of Water Resources, for a proposal resulting in annual savings of $88,456, recommending a designed, noncontact measuring tool that uses one wire, with custom built electronic equipment, for checking alignment of vertical pumps and generators at pumping plants. This bracket assembly, installed on a pumping shaft, provides direct meter readings within 15 minutes and in ten-thousandths of an inch. Normally a standard method to check alignment is to use four plumb wires with weights suspended and two technicians conducting 60 or more operational testing hours to accomplish an accurate reading. Over a four-year period, this tool was used 28 times on 48 units. These meter readings display travel to or away from the shaft and eliminate 40 man-hours per alignment check; and

WHEREAS, These employees' proposals have resulted in actual savings of $739,643; and

WHEREAS, As a result of these savings and increased revenue, it is unnecessary to appropriate additional funds for payment of awards to these employees; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature hereby declares that the following additional awards, authorized by the Department of Personnel Administration, be made to the following named employees:

Ruth Caouette	$	603
Dan R. Cope	$	603
Cheryl A. Martin	$	274
Larry V. Herrback	$	826
Willard D. Brisley	$	2,940
James V. Miller	$	21,000
Harry J. Weekley, Jr.	$	460
David W. Leask	$	258
Robert A. Miller	$	258; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Controller and the Department of Personnel Administration.

RESOLUTION CHAPTER 169

Senate Concurrent Resolution No. 101—Relative to the I.A.A.F. 2001 World Championships in Track and Field.

[Filed with Secretary of State September 15, 1998.]

WHEREAS, California is the nation's leading producer of track and field athletes and is the historic home of some of the greatest athletes ever to compete in the Olympic Games; and

WHEREAS, The International Amateur Athletic Foundation, or I.A.A.F., World Championships in Track and Field, a 10-day event, has never been held in the United States, or anywhere else in the Western Hemisphere in its 14-year history; and

WHEREAS, A technically superior candidature for the 2001 I.A.A.F. World Championships in Track and Field has been mounted by a nonprofit, private-public-sector group, "The 2001 Partnership," that desires to hold this prestigious event at Stanford University and in San Jose and that has the enthusiastic support of the university and the city in this endeavor, and this bid has been selected by USA Track and Field, the sport's national governing body, to represent the United States in the international selection process; and

WHEREAS, This event would be a great boost for California, showcasing the greater Bay Area, the beautiful Stanford University campus, the City of San Jose, and the state's exceptional abilities in the education, entertainment, hospitality, technology, and transportation industries, among others, in the summer of 2001, bringing thousands of visitors to California to witness the championships with a total economic impact of approximately $130 million; and

WHEREAS, Enthusiastic sports fans from the San Francisco Bay Area have proven their love for major sporting events by attending in record numbers events held at Stanford University, such as the 1994 World Cup, the 1985 Super Bowl, the 1984 Olympic soccer competition, the USA-USSR dual track and field meet in 1962, and the 1960 United States Olympic Track and Field Trials; and

WHEREAS, The World Championships would also help all Californians to appreciate the diversity of the Golden State, as would athletes from more than 200 nations who will compete in the championships; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California expresses its support for the United States' bid to hold the 2001 I.A.A.F. World Championships in Track and Field at Stanford University and in San Jose; and be it further

Resolved, That the Legislature requests the Secretary of Trade and Commerce to act as the primary point of contact for coordinating all state agencies in support of the 2001 I.A.A.F. World Championships in Track and Field, and to designate a deputy secretary of the agency to serve on the local organizing committee's advisory board to ensure that the state's services are available and delivered in support of the event in a timely, cost-efficient, and coordinated manner; and be it further

Resolved, That the Legislature requests the Governor to appoint a representative to serve on the local organizing committee's

advisory board in support of the 2001 I.A.A.F. World Championships in Track and Field; and be it further

Resolved, That the Secretary of the Senate deliver copies of this resolution to the Governor, to the Secretary of Trade and Commerce, and to representatives of "The 2001 Partnership."

RESOLUTION CHAPTER 170

Senate Concurrent Resolution No. 102—Relative to highways.

[Filed with Secretary of State September 15, 1998.]

WHEREAS, Richard Allen Flores, born on April 9, 1974, lost his life in a construction accident on January 13, 1998, while working on the Lincoln Avenue overcrossing bridge in the community of Easton in the County of Fresno; and

WHEREAS, Richard Allen Flores is survived by two daughters, five-year-old Serene Celeste and five-month-old Daisy Ellen, and his wife, Estella; and

WHEREAS, It is appropriate to designate the Lincoln Avenue overcrossing bridge the Richard Allen Flores Memorial Bridge; and

WHEREAS, Robert L. Binger, following his graduation from California State University, Fresno (Fresno State) where he represented "The Bulldogs" both in the classroom and on the football field, began his career with the Department of Transportation as a Junior Civil Engineer in 1953; and

WHEREAS, Bob Binger in 1992, after working his way through the ranks in the department, became the District Director for District 6, which includes the five-county area of Fresno, Kern, Kings, Madera, and Tulare Counties; and

WHEREAS, When Bob Binger retired from the department in 1997, he left behind a legacy of transportation improvements, including more than $250,000,000 worth of construction projects in the Fresno metropolitan area; and

WHEREAS, Bob Binger's focus on the future of transportation made him a national expert on a variety of transportation issues; and

WHEREAS, Bob Binger served his alma mater, Fresno State, by working on the annual fund drive of The Bulldog Foundation, raising funds to allow thousands of young men and women to earn a college education and compete in intercollegiate athletics; and

WHEREAS, Bob Binger served as President of The Bulldog Foundation in 1987; and

WHEREAS, In recognition of his dedication to the department, to Fresno State, and to the community he served with care, concern, and loyalty, it is fitting that the Shaw Avenue Interchange on State

Highway Route 168, be designated the Robert L. Binger Interchange; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Lincoln Avenue overcrossing bridge in the community of Easton is hereby officially designated the Richard Allen Flores Memorial Bridge, and the Shaw Avenue Interchange on State Highway Route 168 is hereby officially designated the Robert L. Binger Interchange; and be it further

Resolved, That the Department of Transportation is requested to determine the costs of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing these special designations and, upon receiving donations from nonstate sources covering those costs, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the Director of Transportation.

RESOLUTION CHAPTER 171

Senate Concurrent Resolution No. 104—Relative to the William E. Leonard Interchange.

[Filed with Secretary of State September 15, 1998.]

WHEREAS, William E. Leonard is deserving of special public commendation in recognition of his exemplary career and many civic achievements as a citizen of California's Inland Empire; and

WHEREAS, Mr. Leonard received a Bachelor of Science degree in Business Administration from the University of California at Berkeley; and

WHEREAS, Mr. Leonard served his country during World War II in the Philippines and Japan with the First and Seventh Cavalry Divisions, achieving the rank of First Lieutenant; and

WHEREAS, Mr. Leonard's productive career includes founding and operating the Leonard Realty and Building Company since 1946, as well as developing, owning, and operating various city auto parks, apartment complexes, land subdivisions, and the San Bernardino public golf course; and

WHEREAS, Mr. Leonard has been a member and chairman of both the California Highway Commission (1973–1977) and the California Transportation Commission (1985–93), a member of the State Athletic Commission, and a member of the University of California at Riverside Foundation; and

WHEREAS, Mr. Leonard also has served his community and state as a member and chairman of the San Bernardino Valley College Foundation; a trustee of the St. Bernadine's Hospital Foundation; a

member and past chairman of the San Bernardino Valley College Foundation; a member of the board of the Water Commission of the City of San Bernardino; a member and past director of the San Bernardino Chamber of Commerce; a member and past director of the San Bernardino Valley Board of Realtors; a past director, president, and chairman of the Board of Governors of the National Orange Show; a founding member and president of Inland Action; a member and president of the San Bernardino Host Lions; a member of the Bank of America Inland Division Advisory Board; a member and past chairman of the Security Pacific Bank Inland Division Advisory Board; and a member, treasurer, and elder of the First Presbyterian Church of San Bernardino; and

WHEREAS, This exceptional community leader recently was honored by the Valley Group with its Excellence in Infrastructure Award; by the East Inland Empire Association of Realtors with its President's Exceptional Service Award; by the Boy Scouts of America's California Inland Empire Council with its Distinguished Citizen's Award; and by the Historical and Pioneer Society with its Citizen of the Year Award; and

WHEREAS, As a result of his tireless hard work and unwavering commitment to the State of California and to his local community in San Bernardino County and the Inland Empire, William E. Leonard has succeeded in compiling an impressive record of personal and civic achievement, a record that has earned for him the admiration and respect of those persons who have had the privilege of associating with him; and

WHEREAS, It is proper and fitting that William E. Leonard be honored on his exemplary career as well as his constant record of leadership on state transportation issues, especially his long-term support for the construction of the Foothill Freeway, by naming the freeway interchange now under construction at the juncture of Interstate Highway Route 15 and State Highway Route 210 in the County of San Bernardino the William E. Leonard Interchange; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the freeway interchange at the juncture of Interstate Highway Route 15 and State Highway Route 210 in the County of San Bernardino be officially designated the "William E. Leonard Interchange"; and be it further

Resolved, That the Department of Transportation is requested to determine the cost of appropriate plaques and markers, consistent with the signing requirements for the state highway system, showing that special designation, and, upon receiving donations from nonstate sources sufficient to cover that cost, to erect those plaques and markers; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the Department of Transportation and to the author for

appropriate distribution.

RESOLUTION CHAPTER 172

Senate Concurrent Resolution No. 105—Relative to newborn hearing screening.

[Filed with Secretary of State September 15, 1998.]

WHEREAS, The State Department of Health Services is required to administer various programs relating to infant and child health; and

WHEREAS, The State Department of Education is granted specific responsibilities relating to the education of the deaf and hard of hearing; and

WHEREAS, Hearing loss occurs in newborns more frequently than any other health condition for which newborn screening is currently required; and

WHEREAS, Early detection of hearing loss, early intervention, and followup services before six months of age have been demonstrated to be highly effective in facilitating a child's health development in a manner consistent with the child's age and cognitive ability; and

WHEREAS, The State Newborn Hearing Screening Intervention Task Force shall be established to advise the Newborn and Infant Hearing Screening, Tracking, and Intervention Program established by the State Department of Health Services; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the State Newborn Hearing Screening Intervention Task Force is hereby established, to be composed of 20 members as follows:

(a) Three nonvoting ex officio members, as follows:

(1) The Director of Health Services or his or her designee.

(2) The Director of Developmental Services or his or her designee.

(3) The Superintendent of Public Instruction or his or her designee.

(b) The 17 voting members shall be as follows:

(1) One speech pathologist with background in or knowledge of providing services to infants with hearing loss.

(2) One pediatrician-neonatologist with background in or knowledge of infant hearing screening.

(3) One otolaryngologist with background in or knowledge in infant hearing screening.

(4) One audiologist with background in or knowledge of providing services to infants with hearing loss.

(5) One representative of a hospital involved in providing infant hearing screening.

(6) Four consumers, two who are deaf and two who are hard of hearing, recommended by recognized state organizations representing deaf and hard of hearing people.

(7) Two parents of children with hearing loss recommended by recognized state organizations representing parents of children who are deaf or hard of hearing.

(8) Two certified teachers of the deaf, one from a public school early intervention services program and one from a state school early intervention services program.

(9) One representative from the State Department of Education, Office of Deaf and Hard of Hearing Education.

(10) One representative from the Coalition of Agencies Serving the Deaf and Hard of Hearing, Inc.

(11) One representative of the State Department of Developmental Services or his or her designee.

(12) One representative recommended by the State Department of Health Services; and be it further

Resolved, That the State Department of Health Services is encouraged to comply with all of the following:

(a) Seek the advice of the State Newborn Hearing Screening Intervention Task Force with regard to approaches for a system to screen all newborns and infants for hearing loss.

(b) Allow the State Newborn Hearing Screening Intervention Task Force to monitor implementation of the Newborn and Infant Hearing Screening, Tracking, and Intervention Program.

(c) Consult with the State Department of Education, Office of Deaf and Hard of Hearing Education, in order that the department may provide local education agencies (LEAs) with information on infants suspected or confirmed with hearing loss for the purpose of making services available to the family as required by federal law.

(d) Develop a plan for presentation to the Legislature that would expand the Newborn and Infant Hearing Screening, Tracking, and Intervention Program to effectively screen 95 percent of all infants born in general acute care hospitals; and be it further

Resolved, That the Secretary of the Senate transmit a copy of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 173

Senate Concurrent Resolution No. 106—Relative to the Honorable Frank K. Richardson.

[Filed with Secretary of State September 15, 1998.]

WHEREAS, The Honorable Frank K. Richardson, Retired Associate Justice of the Supreme Court of California, has brought credit and distinction to himself through his illustrious record of public service, and it is appropriate at this time to commemorate the valuable leadership and dedicated service he has provided to his community and the people of the State of California; and

WHEREAS, Justice Frank Richardson was born in St. Helena, Napa County, California, and lived in various locations in Northern California, one of which was Sacramento, where he attended Marshall School; and

WHEREAS, After he completed his freshman year in high school in San Jose, the Richardson family moved to Philadelphia, Pennsylvania, where Frank attended Germantown High School; and

WHEREAS, Frank attended the University of Pennsylvania for his freshman year of college but then transferred to Stanford University, where he graduated with a Bachelor of Arts degree "With Distinction" in political science in 1935 and was elected to the Phi Beta Kappa Honors Society, and graduated from Stanford Law School with a Bachelor of Laws degree in 1938; and

WHEREAS, Frank became a member of the California State Bar in 1938, upon passing the bar exam, and began practicing law in Oroville in the law offices of retired Judge Hiram Walker and, while practicing law, Frank immersed himself in the civic life of Oroville by serving as President of the Oroville Rotary Club, as a member of the Methodist Church, and as a Republican candidate for the State Assembly; and

WHEREAS, While residing in Oroville, Frank met Betty Kingdon, whom he later married in 1943, and this year they celebrated their 55th wedding anniversary on January 23, 1998, and the Richardsons' household has grown to include four sons and five grandchildren; and

WHEREAS, During World War II, Frank served as a First Lieutenant in the United States Army (Intelligence), participated in the European Theatre of Operations, and received two Battle Stars for his valor; and

WHEREAS, After the war, Frank and Betty Richardson decided to move to Sacramento, a place they both love and which has been their home for the last forty-three years; and

WHEREAS, From 1946 to 1971, Frank practiced law, first as an associate to Sumner Mering, then by himself as a sole practitioner for twenty-three years, and also, during this time, taught law classes at night in Evidence and Torts at McGeorge School of Law; and

WHEREAS, In 1971, then-Governor Ronald Reagan appointed Frank Richardson as Presiding Justice of the Third District Court of Appeal in Sacramento; in 1974, Governor Reagan elevated Justice Richardson to the California Supreme Court, where he served for nine years as an Associate Justice, and, in December 1983, Justice Richardson retired from the California Supreme Court; and

WHEREAS, Six months after his retirement from the California Supreme Court, and after a semester of teaching at Pepperdine University School of Law as its Distinguished Visiting Scholar, President Ronald Reagan appointed Justice Richardson as Solicitor to the United States Department of the Interior and, in that capacity, Frank supervised the work of the legal staff of the Department of the Interior throughout the United States until his retirement from that position in July 1985; and

WHEREAS, In recognition of his skills as a lawyer and judge, and for his service to his community, state, and to the legal profession, Justice Frank Richardson has received honorary doctorates in law from Pepperdine University School of Law, Mid-Valley College of Law in Los Angeles, Western State University School of Law in San Diego, and the University of Southern California School of Law, which also made him an Honorary Member of its Order of the Coif Society; and

WHEREAS, Justice Richardson served as a member of the Board of Visitors of Stanford Law School, McGeorge School of Law, Pepperdine University School of Law, Brigham Young University School of Law, and Whittier College of Law, and he was a member of the Board of Regents of the University of the Pacific and the Editorial Board for the University of San Francisco Law Review; and

WHEREAS, In the years following his retirement from the California Supreme Court, Justice Richardson has served as Chairman of the Select Committee on Internal Procedures of the Supreme Court of California, as a member of both the Advisory Board of the National Institute of Justice and the California Commission on Campaign Financing, and as a member of the Board of Directors of FEDCO and the Board of Governors of the President Ronald Reagan Foundation; and

WHEREAS, In 1993, Justice Richardson was elected a Fellow of the American Bar Foundation, an honorary organization of attorneys, judges, and law teachers whose professional, public, and private careers have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession; and

WHEREAS, Frank was active in numerous state and local bar activities, including his leadership as President of the Sacramento County Bar Association, as a member of the Executive Committee of the State Bar, the Conference of Delegates, the Committee for the Administration of Justice, and the Committee of Bar Examiners, as Counsel to the California Commission on Uniform State Laws, and as a Fellow of the American College of Probate Counsel; and

WHEREAS, His attention extended beyond his professional interests to the local community, where he distinguished himself as President of the Sacramento World Affairs Council, the Sacramento Community Welfare Council, the Sacramento YMCA, and the Sacramento Lions Club, as an active community member in the

United Crusade and KVIE-Channel 6, Sacramento's public television station, and as the founder and first President and member of the Board of Directors of the Methodist Hospital of Sacramento; and

WHEREAS, Frank Richardson served on the Board of Directors of the Sacramento Chamber of Commerce, the Boy Scouts of America, the Goodwill Industries of Northern California, and the Sacramento State College Association, and years later, after his retirement from the court, he served as Chairman of Sacramento's Bicentennial Commission; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Members take great pleasure in commending the Honorable Frank K. Richardson, Retired Justice of the Supreme Court of California, for his outstanding record of judicial leadership, his long and distinguished record of public service, and his outstanding display of civic leadership, and that they convey to him best wishes for continued success in his future endeavors.

RESOLUTION CHAPTER 174

Assembly Concurrent Resolution No. 99—Relative to Red Ribbon Week.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, Californians for Drug-Free Youth, Inc., a statewide parent-community organization, the office of the Governor, the office of the Attorney General, the State Department of Alcohol and Drug Programs, the State Department of Education, the California Parent Teacher Association, and over 100 other statewide agencies, departments, and organizations are cosponsoring October 23 through October 30, 1998, as Red Ribbon Week; and

WHEREAS, Parents, youth, schools, businesses, law enforcement, religious institutions, service organizations, senior citizens, medical and military personnel, sports teams, and individuals throughout the state will demonstrate their commitment to drug-free, healthy lifestyles by wearing and displaying red ribbons during this weeklong celebration; and

WHEREAS, The theme of this year's effort is "I've Got Better Things To Do Than Drugs"; and

WHEREAS, Drug abuse stands as one of the major challenges our state faces in securing a safe and healthy future for our children; and

WHEREAS, The objective of Red Ribbon Week, 1998, will be to promote this view through drug prevention, education, parental involvement, and communitywide support; and

WHEREAS, The Assembly of the State of California has further committed its resources to ensure the success of the Red Ribbon Week celebration; now, therefore, be it

Resolved, by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims its support for the Red Ribbon Week celebration by proclaiming October 23 through October 30, 1998, as Red Ribbon Week; and be it further

Resolved, That the Legislature encourages all Californians to help build drug-free communities and to participate in drug prevention activities by making a visible statement that the Members of the Legislature are firmly committed to healthy, productive, drug-free lifestyles; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor for appropriate distribution throughout the community.

RESOLUTION CHAPTER 175

Assembly Concurrent Resolution No. 183—Relative to Italian-American Wartime Internment Remembrance Week.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, During World War II, Italian Americans comprised the largest foreign-born group in California and the entire United States; and

WHEREAS, Italian Americans today are the fifth-largest ancestry group in the United States, numbering over 15 million, and more than 1.5 million Italian Americans live in California; and

WHEREAS, Hundreds of thousands of Italian Americans performed exemplary service and thousands sacrificed their lives in defense of the United States; and

WHEREAS, During World War II, thousands of Italian-American citizens and residents of Italian origin were arrested, and 264 of them were incarcerated for the duration of the war in internment camps located in Fort Missoula, Montana; Fort Sam Houston, Texas; Camp Forrest, Tennessee; and Fort MacAlester, Oklahoma; and

WHEREAS, During World War II, the freedom of more than 52,000 Italian-born immigrants in California, and more than 600,000 Italian-born immigrants nationwide, was restricted by government measures that branded them "enemy aliens"; and

WHEREAS, These restrictions included mandatory identification booklets, travel restrictions, curfews, and the seizure of personal property, causing many to lose their employment; and

WHEREAS, During World War II, more than 10,000 Italian-American immigrants living in California, mostly elderly women, were forced to leave their homes and were prohibited from entering California's coastal zones; and

WHEREAS, During World War II, Italian-American fishermen were prevented from entering fishing areas and many of these fishermen had their boats confiscated by the United States Navy for government use during the war; and

WHEREAS, During World War II, scores of naturalized citizens of Italian descent were investigated by the Assembly Fact-Finding Committee on Un-American Activities in California as suspected leaders of a fascist movement in California, and more than 20 were excluded from California for the duration of the war; and

WHEREAS, The impact of the wartime experience was devastating to Italian-American communities in California, the effects of which are still being felt; and

WHEREAS, Italian-American citizens and residents of Italian origin and their families seek the United States government's acknowledgment of this tragic and largely unknown experience; and

WHEREAS, This story needs to be told in order to acknowledge that these events happened, to remember those whose lives were unjustly disrupted and whose freedoms were violated, to help repair the damage to California's Italian-American communities, and to discourage the occurrence of similar injustices and violations of civil liberties in the future; and

WHEREAS, The month of October in California is Italian-American History Month; and

WHEREAS, The exhibit "Una Storia Segreta—The Secret Story" will again be on display in the Capitol Rotunda from August 17 to September 4, 1998; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature welcomes the exhibit "Una Storia Segreta—The Secret Story" again to the Capitol Rotunda; and be it further

Resolved, That the Legislature encourages Californians to view the exhibit to promote greater awareness of this regrettable moment in history; and be it further

Resolved, That the Legislature recognizes the occurrence of these events and formally acknowledges that these events represented a fundamental injustice against Italian-American citizens and residents of Italian origin; and be it further

Resolved, That the Legislature hereby designates the second week of October of every year as "Italian-American Wartime Internment Remembrance Week"; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

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RESOLUTION CHAPTER 176

Assembly Concurrent Resolution No. 185—Relative to Arizona Boys Ranch.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, The State Department of Social Services acted quickly and appropriately when the department withdrew funding and suspended the interstate compact with the Arizona Boys Ranch based on the recommendations of the California Investigative Team. The California Investigative Team was formed by the State Department of Social Services to review the circumstances leading to the death of 16-year-old Nicholaus Contreraz, who died March 2, 1998, while residing at the Arizona Boys Ranch. A majority of the team recommended that a moratorium be imposed against new placements at the ranch and that California's young men be immediately removed. A minority of the team concurred with the moratorium, but further recommended that residents be permitted to complete their programs; and

WHEREAS, Some of the young men residing at the ranch on March 2, 1998, witnessed Nicholaus Contreraz' death and were traumatized by that event; and

WHEREAS, As a result of the state's investigation, counties are withdrawing young men from the program. Los Angeles County, for example, returned all of its 90 young men who were residing at the Arizona Boys Ranch; and

WHEREAS, The state's decision to withdraw California's young men from the Arizona Boys Ranch is not completely understood by the affected young men even though it was the best course of action to protect them, given the potential for physical and psychological abuse at the ranch; and

WHEREAS, California's Department of the Youth Authority was not appropriate for placement of many of these young men because their offenses were not serious, and these are young men who have a strong potential to reenter society as productive citizens; and

WHEREAS, Now that these young men have returned or will be returning home, it is appropriate to take steps to minimize any disruption in their progress towards reform and to assess their needs prior to alternative placement; and

WHEREAS, Some of the young men who returned to Los Angeles County were participating in education and job training programs at the Arizona Boys Ranch and were removed before they could complete their programs; and

WHEREAS, Some of the young men have expressed concerns about their future, particularly those who were working hard to turn their lives around; and

WHEREAS, Juveniles who are survivors of abuse or neglect may be vulnerable to trauma, depression, and frustration when they experience multiple abrupt removals from their residences, and their road to recovery could be irreparably disrupted; and

WHEREAS, While the actions of personnel at the Arizona Boys Ranch resulted in California's decision to remove the young men from that placement, some of the young men were making solid progress and should have an opportunity to complete the programs in their home state; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California hereby requests the State Department of Social Services to work with counties to support other placement activities that would further the progress of these young men, excluding return to the Arizona Boys Ranch; and to support the assessment and treatment of the psychological, educational, and physical condition of those young men who remain in or who were removed from the Arizona Boys Ranch; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the appropriate persons at the State Department of Social Services, and to the author for appropriate distribution.

RESOLUTION CHAPTER 177

Assembly Concurrent Resolution No. 186—Relative to state personnel administration.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, The Year 2000 Problem poses a substantial risk to the welfare of the citizens, businesses, and state government of California; and

WHEREAS, Massive efforts are underway in state and local government and the private sector to prepare all "mission critical" computer systems to recognize the year 2000, thereby protecting against computer failures that could jeopardize our public safety, economic health, ready access to electricity and water, medical care, and numerous other essential goods and services; and

WHEREAS, By issuing Executive Order W-163-97 in October 1997, the Governor directed all state departments and agencies to find and fix the Year 2000 Problem for every mission critical computer system by December 31, 1998; and

WHEREAS, The Department of Information Technology (DOIT), in implementing the Governor's executive order, has been monitoring the progress of state departments and agencies and reporting their progress to the Governor and the Assembly

Committee on Information Technology, the Senate Select Committee on Economic Development, and the Senate Select Committee on Procurement, Expenditure and Information Technology; and

WHEREAS, The California 2000 Quarterly Report, released by the DOIT in April 1998, indicated that the most intense period for Year 2000 project completions will be December 1998, the month of the Governor's deadline. In fact, more Year 2000 projects are scheduled to be completed in December of 1998 (251 projects) than were completed in all of 1997 (177 projects); and

WHEREAS, The DOIT acknowledges that among the many inherent risks in Year 2000 project schedules submitted by state departments and agencies is the risk that "state workers who have not been able to take vacation earlier in the year because of workload traditionally are required to schedule time off during these months to avoid losing the vacation they cannot carry over into the following year. Statewide changes to IT [information technology] systems and infrastructure have in the past been kept to a minimum during the last three weeks of the [calendar] year, in large part because of staff availability and schedules"; and

WHEREAS, The Milton Marks Commission on California State Government Organization and Economy, commonly referred to as the "Little Hoover Commission," in an open letter to the Governor and Members of the Legislature on the Year 2000 Problem, dated May 29, 1998, recommended that the state review its personnel rules and advised the Department of Personnel Administration (DPA) to interpret its rules in a manner that would allow personnel working on Year 2000 projects to delay vacations and continue to work until their Year 2000 project is completed; and

WHEREAS, The Legislature, pursuant to Sections 19815.4 and 19856 of the Government Code, has authorized the Director of the DPA to adopt rules and regulations governing personnel administration, in general, and governing vacation accumulation specifically; and

WHEREAS, As directed by the Legislature, the DPA has adopted regulations regarding personnel administration and vacation accumulation, specifically in Section 599.737 of Title 2 of the California Code of Regulations, relating to personnel administration; and

WHEREAS, The Little Hoover Commission identified that the root concern regarding the use of accumulated vacation credits by state employees working on Year 2000 projects is the application of Section 599.737 of Title 2 of the California Code of Regulations, which reads, in part, as follows: "... of the vacation to which he or she is entitled in a calendar year, the employee may accumulate the unused portion, provided that on January 1st of a calendar year, the employee shall not have more than 30 vacation days for 10 or less years of service or 40 vacation days for more than 10 years of service." The purpose of

this regulation is to prevent state employees from accruing blocks of vacation time that may result in large, unbudgeted expenses when an employee decides to take a vacation, retire, or change jobs; and

WHEREAS, The DPA, in the adoption of Section 599.737 of Title 2 of the California Code of Regulations, also included specific exceptions from the accumulation limit of vacation credits to "permit an employee to carry over more vacation credits than the prescribed maximum when the employee is prevented from taking vacation because the employee is ... assigned work of priority or critical nature over an extended period of time ... . The carry-over of vacation credits in successive years may only be approved by the appointing power in extenuating circumstances"; and

WHEREAS, Hundreds of dedicated state workers are working to make the state's computer systems Year 2000 compliant and should not be diverted from that important task by a minor misinterpretation of existing regulations; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California respectfully memorializes the state chief information officer and the Department of Information Technology to take every action necessary to ensure that satisfactory care is taken by state departments and agencies in applying Section 599.737 of Title 2 of the California Code of Regulations, relating to administering the vacation credits of state employees who are working on projects to implement Executive Order W-163-97; and be it further

Resolved, That the Legislature considers projects relative to the Year 2000 Problem and the pursuit of Year 2000 compliance in all mission critical computer systems, as prescribed in Executive Order W-163-97, by December 31, 1998, without prejudice, to be assigned work of priority or critical nature over an extended period of time and that this consideration shall be in effect until June 30, 2001, or the expiration of Executive Order W-163-97, whichever is later; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the state chief information officer for appropriate distribution to state departments and agencies, and their directors or personnel officers in order to make them fully aware of both the exceptions included in Section 599.737 of Title 2 of the California Code of Regulations, relating to the administration of vacation accumulation of state personnel assigned work of priority or critical nature over an extended period of time, and the Legislature's consideration of the Year 2000 Problem and the pursuit of Year 2000 compliance.

RESOLUTION CHAPTER 178

Assembly Concurrent Resolution No. 187—Relative to oversized highway vehicles.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, The Department of the California Highway Patrol is responsible for ensuring the safety of the public as they utilize the highway transportation system; and

WHEREAS, Vehicles that are 80 inches or more in width and 80 inches or more in height, while traveling in the left lane of multilane freeways, may pose a visual hazard for other drivers; and

WHEREAS, These vehicles, due to their size, may pose a greater potential for death or serious injury when they are involved in collisions than other vehicles; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Commissioner of the California Highway Patrol is requested to implement a six-month study of the accidents involving vehicles that are 80 inches or more in width and 80 inches or more in height when driven in the left lane of multilane freeways. The goal of the study shall be to determine whether these vehicles pose a visual hazard to motorists that is a causative factor in motor vehicle traffic accidents. The study shall examine the factors in accidents involving these vehicles including, but not limited to, the number of accidents, the traffic lanes involved, the speed of the vehicles, the primary collision factor, and the party most at fault; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Commissioner of the California Highway Patrol.

RESOLUTION CHAPTER 179

Assembly Concurrent Resolution No. 188—Relative to Obesity Awareness Month.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, Obesity is caused by multiple factors, including genetic predisposition, environmental, and lifestyle factors; and

WHEREAS, Obesity ranks second only to smoking as a preventable cause of death and results in some 300,000 deaths annually; and

WHEREAS, It is estimated that 35 percent of the adult population is obese, and the prevalence of obesity grew a shocking 34 percent in the last 10 years; and

WHEREAS, There also is great concern regarding the effect of obesity in children may have on their overall health, health care costs, and treatment; and

WHEREAS, A causal relationship exists between obesity and a number of serious disorders, including hypertension, dyslipidemia, cardiovascular disease, type-two diabetes, gallbladder disease, respiratory dysfunction, gout, and osteoarthritis; and

WHEREAS, The National Institute of Diabetes and Digestive and Kidney Diseases provides information that indicates that nearly 80 percent of patients with diabetes mellitus are obese, and the incidence of symptomatic gallstones soars as a person's body mass index increases beyond a certain level; and

WHEREAS, The information also reveals that nearly 70 percent of diagnosed cases of cardiovascular disease are related to obesity, obesity more than doubles a person's chances of developing high blood pressure, almost one-half of breast cancer cases are diagnosed among obese women, and 42 percent of colon cancer cases are among obese individuals; and

WHEREAS, A 1997 study by Kaiser Permanente indicated that the total direct costs of obesity-related disease in the United States in 1990 was 45.8 billion dollars; and

WHEREAS, The Kaiser study concluded that there is a significant potential for a reduction in health care expenditures through obesity prevention efforts; and

WHEREAS, The Surgeon General's Report on Physical Activity and Health estimates that only 24 percent of the United States population engages in regular physical activity, 52 percent are intermittently active, and 25 percent are entirely sedentary; and

WHEREAS, The Interdisciplinary Council on Lifestyle and Obesity Management indicates that healthy lifestyle modifications should include increased physical activity, with an emphasis on moderate forms of exertion; and

WHEREAS, There is an urgent need for state health care groups and medical societies to place obesity at the top of California's health care agenda; and

WHEREAS, The National Institutes of Health, the American Society for Bariatric Surgery, and the American Obesity Association recommend that patients who are morbidly obese receive responsible, affordable medical treatment for their obesity; and

WHEREAS, The diagnosis of morbid obesity should be a clinical decision made by a physician based on proper medical protocols; and

WHEREAS, The recent breakthroughs in drug therapy can treat obesity successfully, and the New England Journal of Medicine recently emphasized the legitimate use of pharmacotherapy as a component of treatment of medically significant obesity; and

WHEREAS, The new breakthroughs in obesity treatment are not widely known and efforts must be made to inform the general public

and health care professionals that pharmacotherapy can be used as an effective and cost-effective treatment for obesity; and

WHEREAS, It is critical to raise the awareness of the public and private sectors that obesity is a problem of epidemic proportions that is treatable and that proper treatment will reduce health care costs and improve the quality of life for a large number of our citizens; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature acknowledges obesity as a growing epidemic and encourages improvement in awareness and treatment of the problems of obesity; and be it further

Resolved, That the medical community commits itself to combating obesity through the myriad of tools deemed appropriate for the individual, including, but not limited to, nutrition, pharmacotherapy, and exercise; and be it further

Resolved, That the Legislature designates the month of April 1999 as Obesity Awareness Month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Secretary of the Health and Welfare Agency.

RESOLUTION CHAPTER 180

Assembly Concurrent Resolution No. 189—Relative to September as Cowboy Appreciation Month.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, The cowboy is an American legend; and

WHEREAS, The cowboy represents a character truly unique in our history, with the confidence of the Mexican vaquero, the resourcefulness of the mountain man, the fortitude of the French voyageur, the curiosity of the pioneer, and the patience and hope of farmers and clerks who braved the plains, mountains, and deserts to go westering in the tradition of the Vikings; and

WHEREAS, The cowboy raised, then moved cattle across vast distances to feed a hungry nation; and

WHEREAS, The cowboy braved death by stampede, drowning at unknown fords, snakebite, infection, Indian raids, extremes of weather, heat exhaustion and Blue Northers, sudden kicks or lunges of recalcitrant cattle, mules, or horses, and forsook the comforts of a wife and family to cross great, unknown expanses of land, and left his horse's hoof prints as a guide for later road makers; and

WHEREAS, The cowboy met those perils with fortitude, resourcefulness, courage, dependability, loyalty, and a humor that could turn the laugh on himself in the midst of dire circumstance; and

WHEREAS, The cowboy carried out his often tedious duties for 30 dollars a month, owned little but his horse, saddle, and a change of clothes; and

WHEREAS, The cowboy reveled in the knowledge that whether he wore sweat stained clothing and a dusty beard, or duded up and fresh from a bath at trail's end, he could look any man in the eye, and aspire to any dream; and

WHEREAS, The cowboy rode into the American consciousness with the great trail drives that began at the end of the Civil War, and soon became a national legend as a sterling figure in dime novels, then later movies and television; and

WHEREAS, The cowboy's qualities transcended and supplanted the derring-do of exaggerated tales; and

WHEREAS, The American people and the world recognized the cowboy as a figure as unique as the crusader of medieval times, or the mariner who dared unknown oceans to trail the sun across the horizon; and

WHEREAS, Although his number has diminished from a century ago, and he now employs computer and laser technology along with riata and reins to feed the nation; and

WHEREAS, The cowboy still delights in competing with other cowboys to show his prowess in riding, roping, and handling cattle and horses; and

WHEREAS, That spirit exemplifies all that is admirable about the cowboy as he acknowledges victory with a smile and the sweep of his Stetson, or rises from the dust where an animal has thrown him to heartily congratulate his winning opponent; and

WHEREAS, Rodeos are traditionally held in the summer throughout California and the western United States; and

WHEREAS, It is altogether appropriate and proper that his spirit be honored for the qualities he has shown and the place he represents in American and world history; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature of the State of California proclaims September 1998, as Cowboy Appreciation Month; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the author for appropriate distribution.

RESOLUTION CHAPTER 181

Assembly Concurrent Resolution No. 191—Relative to Nonsteroidal Anti-Inflammatory Drugs Awareness Day.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, Nearly 75 percent of the estimated 33 million Americans who regularly use nonsteroidal anti-inflammatory drugs, such as aspirin, ibuprofen, and naproxen, may be unaware or unconcerned that these pain relievers can cause serious gastrointestinal problems, including bleeding ulcers; and

WHEREAS, Gastrointestinal complications caused by nonsteroidal anti-inflammatory drugs remain one of the most prevalent drug toxicities in the nation, leading to approximately 76,000 hospitalizations and 7,600 deaths annually, a mortality rate comparable to that of asthma, cervical cancer, or melanoma; and

WHEREAS, Adults over the age of 60 years form the largest population of nonsteroidal anti-inflammatory drug users, yet those in this age group are more than twice as likely to understate their risk; and

WHEREAS, Fifty-nine percent of nonsteroidal anti-inflammatory drug users are at moderate to high risk of developing serious gastrointestinal complications, while three quarters of these people perceive themselves at no risk at all; and

WHEREAS, Only one in five people who suffer nonsteroidal anti-inflammatory drug-induced gastrointestinal complications experiences any warning signs; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Legislature hereby proclaims its support for the decrease of dangerous health conditions caused by common pain relievers by proclaiming November 17, 1998, as "Nonsteroidal Anti-Inflammatory Drugs Awareness Day"; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the Governor of the State of California, and to the author for appropriate distribution.

RESOLUTION CHAPTER 182

Assembly Concurrent Resolution No. 192—Relative to aerospace development.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, California has historically been the leader in aerospace development; and

WHEREAS, The National Aeronautics and Space Administration (NASA) has announced its intention to revise the current space shuttle program and has partnered with the Lockheed Martin Corporation and its associates to develop the next generation commercial space launch vehicle to be named VentureStar; and

WHEREAS, Lockheed Martin Corporation and NASA are searching for primary and secondary launch sites with 10,000 foot runways to construct or utilize an existing spaceport; and

WHEREAS, The State of California has facilities that meet those criteria, one being Vandenburg Air Force Base and the others being in the vicinity of Edwards Air Force Base; and

WHEREAS, The X-33 Program, the technology demonstrator vehicle for the VentureStar, is currently being built in California and will be launched to determine the feasibility of, and to perfect, Reusable Launch Vehicle (RLV) technology; and

WHEREAS, The California Spaceport Authority, California Space and Technology Alliance, administers the California Space Flight Competitive Grant Program to which the State of California has recently allocated one million one hundred thousand dollars ($1,100,000) for purposes of promoting California's commercial space launch and landing capabilities, commercial space research and education, and other commercial space activities; and

WHEREAS, The State of California has recently allocated one million one hundred thousand dollars ($1,100,000) for the purpose of enhancing space flight infrastructure to the Highway to Space Competitive Grant Program, which is administered by the Western Commercial Space Center; and

WHEREAS, The State of California has provided one million five hundred thousand dollars ($1,500,000) to the Trade and Commerce Agency specifically for activities connected to preparations, including studies, necessary to complete the proposal for the VentureStar Spaceport; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, concurrently, That the Legislature of the State of California respectfully memorializes the President and CEO of the Lockheed Martin Corporation to choose California as the site for the development, production, and launch of the VentureStar and for future commercial space activities; and be it further

Resolved, That the Chief Clerk of the Assembly transmit a copy of this resolution to the President and CEO of the Lockheed Martin Corporation.

RESOLUTION CHAPTER 183

Assembly Joint Resolution No. 59—Relative to Reflex Sympathetic Dystrophy Syndrome.

[Filed with Secretary of State September 16, 1998.]

WHEREAS, Reflex Sympathetic Dystrophy Syndrome (RSDS) is a heinous autonomic neurological disease that causes severe burning

pain, extreme sensitivity to touch, swelling, excessive sweating, and deterioration of the skin, tissue, muscles, and bones; and

WHEREAS, RSDS usually affects the arms and legs, but can affect any part of the body; and

WHEREAS, There are an estimated 6,000,000 people in the United States with this disease and, thus, it is not a rare disease; and

WHEREAS, The unremitting pain of RSDS has caused many people much physical and emotional misery; and

WHEREAS, There is no reason for these people to also suffer financial devastation and additional misery; and

WHEREAS, Under federal law, each person with RSDS who applies for Social Security disability insurance is considered on an individual basis and by the time benefits are awarded, it may take as long as three years; and

WHEREAS, In the interim, savings, belongings, and homes are lost and the stress from this financial devastation, along with the terrible pain, often results in the individual becoming severely depressed; and

WHEREAS, This financial misery could be lessened or averted if victims of RSDS qualified immediately for Social Security disability insurance benefits upon proper diagnosis and progression to a state of disability; now, therefore, be it

Resolved by the Assembly and Senate of the State of California, jointly, That the California Legislature urges the Congress of the United States to enact legislation to qualify automatically persons with Reflex Sympathetic Dystrophy Syndrome (RSDS) for Social Security disability insurance benefits upon proper diagnosis and progression to a state of disability; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, the Speaker of the House of Representatives, and to each Senator and representative from California in the Congress of the United States.

1997–98

FIRST EXTRAORDINARY SESSION

EXTRAORDINARY SESSION SPECIAL RULES OF EFFECTIVENESS

Except for a statute calling an election, a statute providing for a tax levy or an appropriation calling for the usual current expenses of the state, and an urgency statute, all of which take effect immediately following enactment, a statute adopted during an extraordinary session takes effect on the 91st day following the adjournment of the special session (see subdivision (c) of Section 8 of Article IV of the California Constitution). 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. 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 reconvening date.

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

A PROCLAMATION
by the
Governor of the State of California

WHEREAS, an extraordinary occasion has arisen and now exists requiring that the Legislature of the State of California be convened in extraordinary session; now therefore,

I, PETE WILSON, Governor of the State of California, by virtue of the power and authority vested in me by Section 3 (b) Article IV of the Constitution of the State of California, do hereby convene the Legislature of the State of California to meet in extraordinary session at Sacramento, California, on the 13th day of January, 1997, at a time appointed by each house of the Legislature of said day for the following purpose and to legislate upon the following subject:

To consider and act upon legislation relative to providing assistance to those persons and public entities that suffered losses as a result of the heavy rains and flooding in the counties for which I have proclaimed a State of Emergency.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 7th day of January 1997.

Governor of California

ATTEST:

Secretary of State

STATUTES OF CALIFORNIA

1997–98

FIRST EXTRAORDINARY SESSION

1998 CHAPTER

CHAPTER 9

An act to amend Sections 1601 and 1603 of the Fish and Game Code, relating to streambeds.

[Approved by Governor September 15, 1998. Filed with Secretary of State September 15, 1998.]

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

SECTION 1. Section 1601 of the Fish and Game Code is amended to read:

1601. (a) Except as provided in this section, general plans sufficient to indicate the nature of a project for construction by, or on behalf of, any state or local governmental agency or any public utility shall be submitted to the department if the project will (1) divert, obstruct, or change the natural flow or the bed, channel, or bank of any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which these resources derive benefit, (2) use material from the streambeds designated by the department, or (3) result in the disposal or deposition of debris, waste, or other material containing crumbled, flaked, or ground pavement where it can pass into any river, stream, or lake designated by the department. If an existing fish or wildlife resource may be substantially adversely affected by that construction, the department shall notify the governmental agency or public utility of the existence of the fish or wildlife resource together with a description thereof and shall propose reasonable modifications in the proposed construction that will allow for the protection and continuance of the fish or wildlife resource, including procedures to review the operation of those protective measures. The department's description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected. The proposals shall be submitted within 30 days from the date of receipt of the plans, except that the time period may be extended by mutual agreement. Upon a determination by the department and after notice to the affected parties of the necessity for an onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall make an onsite investigation of the proposed construction and shall make the investigation before it proposes any modifications.

(b) (1) Within 14 days from the date of receipt of the department's proposals, the affected agency or public utility shall notify the department in writing whether the proposals are acceptable, except that the time period may be extended by mutual agreement. If the department's proposals are not acceptable to the

affected agency or public utility, the agency or public utility shall so notify the department. Upon request, the department shall meet with the affected agency or public utility within seven days of receipt of the notification, or at a time mutually agreed upon, for the purpose of developing proposals that are acceptable to the department and the affected agency or public utility.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established. The panel of arbitrators shall be established within seven days from the date of the meeting, or at a time mutually agreed upon, and shall be composed of one representative of the department, one representative of the affected agency or public utility, and a third person mutually agreed upon or, if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as chair of the panel. The panel may settle disagreements and make binding decisions regarding the fish and wildlife modifications. The arbitration shall be completed within 14 days from the date that the composition of the panel is established, unless the time is extended by mutual agreement. The expenses of the department representative shall be paid by the department; the expenses of the representative of the governmental agency or the public utility shall be paid by the governmental agency or the public utility; and the expenses of the chair of the panel shall be paid one-half by each party.

(c) A governmental agency or public utility proposing a project subject to this section shall not commence operations on that project until the department has found that the project will not substantially adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the project. The department shall not condition the streambed alteration agreement on a project subject to this section on the receipt of another state or federal permit.

(d) The department shall determine and specify types of work, methods of performance, or remedial measures that are exempt from this section.

(e) With regard to any project that involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to, and agreement with, the department is not required subsequent to the initial notification and agreement, unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources substantially change, and the resources are adversely affected by the activity conducted under the agreement. This subdivision applies in any instance where notice to, and agreement with, the department has been attained prior to January 1, 1977.

(f) (1) Except as provided in paragraph (2), this section does not apply to any of the following projects:

(A) Immediate emergency work necessary to protect life or property.

(B) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(C) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and functionality. This subparagraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(2) The agency or public utility performing the project shall notify the department within 14 days from the date of commencement of a project exempted by this subdivision.

(3) For purposes of this subdivision, "emergency" means an emergency, as defined in Section 21060.3 of the Public Resources Code.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of operations on projects subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

SEC. 2. Section 1603 of the Fish and Game Code is amended to read:

1603. (a) It is unlawful for any person to substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank of any river, stream, or lake designated by the department, or

use any material from the streambeds, without first notifying the department of that activity, except when the department has been notified pursuant to Section 1601. The department, within 30 days from the date of receipt of that notice, or within the time determined by mutual written agreement, shall, when an existing fish or wildlife resource may be substantially adversely affected by that activity, notify the person of the existence of that fish or wildlife resource together with a description of the fish or wildlife, and shall submit to the person its proposals as to measures necessary to protect fish and wildlife. Upon a determination by the department of the necessity for onsite investigation or upon the request for an onsite investigation by the affected parties, the department shall notify the affected parties that it shall make an onsite investigation of the activity and shall make that investigation before it proposes any measure necessary to protect the fish and wildlife. The department's description of an existing fish or wildlife resource shall be specific and detailed and the department shall make available upon request the information upon which its conclusion is based that the resource may be substantially adversely affected.

(b) (1) Within 14 days from the date of receipt of the department's proposals, the affected person shall notify the department in writing whether the proposals are acceptable, except that the time period may be extended by mutual agreement. If the department's proposals are not acceptable to the affected person, the person shall so notify the department. Upon request, the department shall meet with the affected person within seven days from the date of receipt of that notification or by a date that may be mutually agreed upon for the purpose of developing proposals that are acceptable to the department and the affected person.

(2) If mutual agreement is not reached at the meeting held pursuant to paragraph (1), a panel of arbitrators shall be established. However, appointment of the panel may be deferred by mutual consent of the parties. The panel shall be established within seven days from the date of that meeting and shall be composed of one representative of the department, one representative of the affected person, and a third person mutually agreed upon or, if no agreement can be reached, the third person shall be appointed in the manner provided by Section 1281.6 of the Code of Civil Procedure. The third person shall act as panel chair. The panel may settle disagreements and make binding decisions regarding fish and wildlife modifications. The arbitration shall be completed within 14 days from the date that the composition of the panel is established, unless the time period is extended by mutual agreement. The expenses of the department representative shall be borne by the department; the expenses of the representative of the person who diverts or obstructs the natural flow, or changes the bed, of any river, stream, or lake, or uses any material from the streambeds shall be borne by that person; and the expenses of the chair of the panel shall be paid one-half by each party.

(c) It is unlawful for any person to commence any activity affected by this section until the department has found that it will not substantially adversely affect an existing fish or wildlife resource or until the department's proposals, or the decisions of a panel of arbitrators, have been incorporated into the activity. If the department fails to act within 30 days from the date of the receipt of the notice, the person may commence the activity. The department shall not condition the streambed alteration agreement on the receipt of another state or federal permit.

(d) It is unlawful for any person to engage in an activity affected by this section, unless the activity is conducted in accordance with the department's proposals or the decisions of the panel of arbitrators.

(e) If an activity involves the routine maintenance and operation of water supply, drainage, flood control, or waste treatment and disposal facilities, notice to and agreement with the department shall not be required subsequent to the initial notification and agreement unless the work as described in the agreement is substantially changed or conditions affecting fish and wildlife resources substantially change and those resources are adversely affected by the activity conducted under the agreement. This subdivision applies in any instance where notice to, and agreement with, the department has been attained prior to January 1, 1977.

(f) (1) Except as provided in paragraph (2), this section does not apply to any of the following projects:

(A) Immediate emergency work necessary to protect life or property.

(B) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(C) Emergency projects undertaken, carried out, or approved by a public agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the Vehicle Code, except for a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing right-of-way of the highway, damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, within one year of the damage. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and functionality. This subparagraph does not exempt from this section any project undertaken, carried out, or approved by a public agency to expand or widen a highway damaged by fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide.

(2) The person performing the project shall notify the department within 14 days from the date of commencement of a project exempted by this subdivision.

(3) For purposes of this subdivision, "emergency" means an emergency, as defined in Section 21060.3 of the Public Resources Code.

(g) The department may enter into agreements with applicants for a term of not more than five years for the performance of activities subject to this section. The terms of the agreement may be renegotiated at any time by mutual consent of the parties. Each agreement shall be renewed automatically by the department at the expiration of its term unless the department determines that there has been a substantial change in conditions. If there is a disagreement between the department and the applicant as to whether there has been a substantial change in conditions, the department and the applicant shall proceed to arbitration pursuant to subdivision (b). The department may charge a fee when the agreement is entered into and for each renewal, but may not charge an annual fee for this purpose.

CONCURRENT RESOLUTION

1997–98

FIRST EXTRAORDINARY SESSION

1998 RESOLUTION CHAPTER

RESOLUTION CHAPTER 2

Senate Concurrent Resolution No. 2—Relative to the 1997–98 First Extraordinary Session of the Legislature.

[Filed with Secretary of State September 15, 1998.]

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the 1997–98 First Extraordinary Session of the Legislature of the State of California shall adjourn sine die on August 31, 1998.